DOCUMENT RESUME

ED 341 640 SO 022 195

AUTHOR	Quigley, Charles N., Ed.; And Others
TITLE	With Liberty and Justice for All: The Story of the Bill of Rights. Teacher's Guide.
INSTITUTION	Center for Civic Education, Calabasas, CA.
SPONS AGENCY	Commission on the Bicentennial of the United States Constitution, Washington, DC.
REPORT NO	ISBN-0-89818-145-3
PUB DATE	91
NOTE	173p.; For the student text, see SO 022 194.
PUB TYPE	Guides - Classroom Use - Teaching Guides (For Teacher) (052)
EDRS PRICE	MF01/PC07 Plus Postage.
DESCRIPTORS	*Citizenship Education; *Citizenship Responsibility; Civil Liberties; *Constitutional History; *Constitutional Law; Critical Thinking; Curriculum Design; *Law Related Education; Learning Activities; Persuasive Discourse; Political Issues; Political Science; Secondary Education; Skill Development; Social Studies; Student Educational Objectives; Teaching Guides; Teaching Methods; *United States History; Units of Study
IDENTIFIERS	*Bill of Rights; Founding Fathers of the United States; United States Constitution

ABSTRACT

This teacher's curriculum guide is designed to introduce secondary students to the ideas behind the Bill of Rights to the U.S. Constitution and the experiences of the Founders that led to the creation of this document. The curriculum's intent is to provide young people with a knowledge of how the Bill of Rights came into existence, why it took the form it did, and how it has been interpreted and applied over the past 200 years. By gaining a better understanding of their rights, it is hoped that students will become better prepared for their responsibilities as citizens. The curriculum helps students learn to apply their knowledge to contemporary issues as well as to a variety of political questions. In so doing, it is hoped that students will develop many useful skills of citizenship such as researching an issue, thinking critically about a problem, concisely summarizing their thinking, and expressing and justifying their reasoned opinions in both written and spoken forms. The curriculum contains 31 lessons that are organized into six units. The six units are entitled: (1) What did the Founders learn about rights from history and their own experience? (2) How was the Bill of Rights created? (3) How were the protections of the Bill of Rights expanded? (4) What rights are protected by the First Amendment? (5) What rights are protected by procedural due process of law? and (6) Who should be responsible for preserving and extending our heritage of individual rights? In the teacher's guide each lesson contains a lesson overview, lesson objectives, teaching procedures, and optional reinforcement and enrichment activities. A number of activities to be undertaken upon the culmination of the curriculum are suggested. A 44-item selected annotated bibliography also is included. (DB)

ED341640

With Liberty and Justice for All

The Story of the Bill of Rights

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
CHARLES N. QUIGLEY
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

TEACHER'S GUIDE

a project of the Center for Civic Education
cosponsored by the
Commission on the Bicentennial of the United States Constitution

SO 022 195

BEST COPY AVAILABLE

With Liberty and Justice for All

The Story of the Bill of Rights

Teacher's Guide

Center for Civic Education 5146 Douglas Fir Road • Calabasas, CA 91302 • (818) 591-9321

Prepared for the
We the People... Bicentennial Programs
on the Constitution and Bill of Rights

Directed by the
Center for Civic Education
and
Cosponsored by the
Commission on the Bicentennial of the United States Constitution

Cover: "Verdict of the People," 1854-55, George Caleb Bingham
From the Art Collection of
The Boatmen's National Bank of St. Louis

© Copyright Center for Civic Education 1991

All rights reserved. Except for use in a review, reproduction or transmittal of this work in any form or by any electronic, mechanical, or other means, now known or hereafter invented, including photocopying and recording, and use of this work in any form in any information storage and retrieval system is forbidden without prior written permission of the publisher.

The Commission on the Bicentennial of the United States Constitution disclaims the responsibility for any opinion or conclusions contained herein. The Federal Government reserves a nonexclusive license to use and reproduce for government purposes, without payment, this material where the government deems it in its interest to do so.

ISBN 0-89818-145-3

Acknowledgments

The following staff have contributed to the development of this teacher's guide.

Editorial Directors
Charles N. Quigley
Duane E. Smith

Editorial Associate
Judith A. Matz

Principal Author
Lorenca Rosal

Staff Associates
Elaine Craig
Kenneth Rodriguez

Art Director
Richard Stein

Production
Roslyn Danberg
Pat Mathwig

The Center wants to express special appreciation to **Chairman Warren E. Burger** and the **staff of the Commission on the Bicentennial of the United States Constitution** for their support of this program. In particular, we have enjoyed the insight and thoughtful suggestions of **Herbert Atherton**, Staff Director; **Jackson Barlow**, Assistant Director for Educational Programs; and **Steven Sorenson**, Program Officer. Appreciation is also owed to **Anne Fickling**, Associate Director of Education for Grants, Education Department, who has provided support to the Center in all aspects of this project.

Members of the Commission on the Bicentennial of the United States Constitution
Warren E. Burger, Chairman

Frederick K. Biebel
Lindy Boggs
Herbert Brownell
Lynne V. Cheney
Philip M. Crane
Dennis DeConcini
William J. Green
Mark O. Hatfield
Edward Victor Hill
Damon J. Keith
Cornelia G. Kennedy
Edward M. Kennedy
Harry McKinley Lightsey, Jr.
Betty Southard Murphy
Thomas H. O'Connor
Phyllis Schlafly
Bernard H. Siegan
Obert C. Tanner
Strom Thurmond
Ronald H. Walker
Charles E. Wiggins
Charles Alan Wright

Advisory Committee
National Bicentennial Competition
Dan Quayle, Chairman

Richard A. Baker
William G. Baker
Walter Berns
Bill Bradley
Margaret Branson
Frederick Brigham, Jr.
Dale Bumpers
R. Freeman Butts
Mark W. Cannon
Michael Casserly
Gordon Cawelti
Philip M. Crane
Mitchell E. Daniels, Jr.
Timothy Dyer
Keith Geiger
Orrin G. Hatch
Mark O. Hatfield
Augustus F. Hawkins
Pat Henry
Antonia Hernandez
Ernest F. Hollings
Bill Honig
Benjamin L. Hooks
A.E. Dick Howard
Edward M. Kennedy
Tom Lantos
William L. Lucas
Joyce G. McCray
Margit McGuire
Milton Mitler
Claiborne Pell
Alfred S. Regnery
Marilyn J. Roeller
Samuel Sava
Robert A. Schadler
Joseph Schere
Fred Schwengel
Albert Shanker
Thomas A. Shannon
Philip R. Sharp
Lynn O. Simons
Raymond W. Smock
Robert T. Stafford
Philippa Strum
Strom Thurmond

Board of Directors
Center for Civic Education
Thomas A. Craven, Chairman

Read Ambler
Margaret Branson
R. Freeman Butts
Donald L. Clark
John F. Cooke
Jane A. Couch
Robin Paige Donoghue
H. David Fish
C. Hugh Friedman
Ruth M. Gadebusch
Susan Hone
Richard Ibanez
Napoleon A. Jones, Jr.
James L. Keane
William L. Lucas
Stephen McCall
Joseph P. McElligott
A. Ronald Oakes
Leland R. Selna, Jr.
Robert B. Taylor
Benjamin Travis
Francis Villemain
Pearl West
frank d. winston

Table of Contents

Preface		1
Introduction		2
An Introduction to the Study of the Bill of Rights		12
Lesson 1	What Do You Know About the Bill of Rights?	13
Lesson 2	Where Are Legal Protections of Your Rights Found?	17
Lesson 3	How Can Studying the History of Rights Help You Deal with Contemporary Issues?	21
Unit One:	**What Did the Founders Learn About Rights from History and Their Own Experiences?**	27
Lesson 4	How Did Our Ideas About Individual Rights Develop?	29
Lesson 5	What Influence Did the Ideas of the Natural Rights Philosophers Have on the Founders?	34
Lesson 6	What Did the Founders Learn About Rights from Studying British History?	38
Lesson 7	How Did the Differences Between American and European Society Influence the Founders' Beliefs About Rights?	42
Lesson 8	What Rights Were Protected by the New States?	47
Unit Two:	**How Was the Bill of Rights Created?**	52
Lesson 9	How Were Rights Protected Under Our National Constitutions?	54
Lesson 10	What Rights Were Included in the New Constitution?	57
Lesson 11	Why Was the Bill of Rights Added to the Constitution?	60
Lesson 12	How Was the Bill of Rights Added to the Constitution?	64
Unit Three:	**How Were the Protections of the Bill of Rights Expanded?**	71
Lesson 13	How Well Did the Bill of Rights Protect Individual Rights Before the Civil War?	73
Lesson 14	What Amendments to the Constitution Were Added to Protect the Rights of African Americans?	77
Lesson 15	How Does the Fourteenth Amendment Promote Equal Protection of the Laws?	81
Lesson 16	How Should the Effects of Past Discrimination Be Remedied?	84
Lesson 17	How Does the Fourteenth Amendment Protect Substantive Due Process?	88
Lesson 18	How Does the Fourteenth Amendment Prohibit States from Violating the Bill of Rights?	91

Unit Four:	**What Rights Are Protected by the First Amendment?**	95
Lesson 19	Why Does the First Amendment Prohibit the Establishment of Religion?	97
Lesson 20	How Does the Free Exercise Clause Protect Your Freedom of Religion?	104
Lesson 21	How Does the First Amendment Protect Your Freedom of Expression?	110
Lesson 22	How Does the First Amendment Protect Your Freedom of Assembly, Petition, and Association?	116
Unit Five:	**What Rights Are Protected by Procedural Due Process of Law?**	121
Lesson 23	What Is the Importance of Procedural Due Process?	123
Lesson 24	How Does the Fourth Amendment Protect You from Unreasonable Searches and Seizures?	126
Lesson 25	How Does the Fifth Amendment Protect You Against Self-Incrimination?	130
Lesson 26	How Does the Sixth Amendment Protect Your Right to a Fair Trial?	134
Lesson 27	How Does the Eighth Amendment Protect You from Excessive Bail and Cruel and Unusual Punishments?	139
Unit Six:	**Who Should Be Responsible for Preserving and Extending Our Heritage of Individual Rights?**	145
Lesson 28	How Have Unenumerated Rights Been Identified and Protected by the Supreme Court?	147
Lesson 29	What Have Been the Roles of Congress and the Executive Branch in Protecting and Expanding Rights?	151
Lesson 30	What Can Be Learned from an International Perspective on Human Rights?	155
Lesson 31	What Responsibilities Do People Have in Preserving and Extending Rights?	158
Culminating Activities		162
Selected Bibliography		163

Preface

A constitutional democracy, more than any other type of government, depends upon an informed, responsible citizenry. While James Madison and Alexander Hamilton hoped that creating the right institutions would solve the problems of self-government, thinkers like Thomas Jefferson and John Adams recognized that these institutions require the support of an enlightened people.

The experience of the past two hundred years confirms their beliefs. The operation of even the most carefully designed political institutions is ultimately dependent upon the character of its citizens. As Montesquieu argued, if tyranny rests on fear, a free government must rest on civic virtue.

From the inception of the public school system in America, educational institutions have played a major role in preparing young people for the responsibilities of citizenship. Schools today, as in the infancy of our republic, must serve and sustain civic competence, civic responsibility, and a reasoned commitment to our fundamental principles and values.

To assist schools in fulfilling this critical role and to help educate students about one of our most essential founding documents, the Center for Civic Education has developed *With Liberty and Justice for All.* Its goal is to promote an increased understanding of the Bill of Rights and the principles and values upon which it is based.

In the process, students will develop skills helpful in becoming effective and responsible citizens. It is hoped that by increasing student understanding of the rights and responsibilities of citizenship, they will be more likely to promote and protect liberty and justice for all.

Charles N. Quigley
Executive Director
Center for Civic Education

Introduction

> *As bills of rights have a tendency to impress some degree of respect for them, to establish the public opinion in their favour, and rouse the attention of the whole community, it may be one means to control the majority from those acts to which they might otherwise be inclined.*

So spoke James Madison to Congress in his endorsement speech of the Bill of Rights in 1789. His arguments about that document still hold true today.

With Liberty and Justice for All introduces secondary students to the ideas behind the Bill of Rights and the experiences of the Founders which led them to create this document for our nation; a document which would become an international symbol of freedom. This is not a conventional history text which focuses on facts, dates, people, and events. Rather it is a history of the ideas, basic values, and fundamental principles upon which our nation is based.

With Liberty and Justice for All is designed to help secondary students understand the rights Americans enjoy and the responsibilities these rights entail. Its intent is to provide young people with a knowledge of how the Bill of Rights came into existence, why it took the form it did, and how it has been interpreted and applied over the past two hundred years. By gaining a better understanding of their rights, it is hoped that students will become better prepared for their responsibilities as citizens.

Teaching Methods

With Liberty and Justice for All is designed to be used with secondary students. The program employs a conceptually oriented approach that stresses the development of analytic and evaluative skills. Because many of the concepts introduced may be unfamiliar to students, the methodology draws heavily on strategies that research and field testing have shown to be successful in developing conceptual understanding.

Students will learn to apply their knowledge to contemporary issues as well as to a variety of political questions. In so doing, they will develop many useful skills of citizenship such as researching an issue, thinking critically about a problem, concisely summarizing their thinking, and expressing and justifying their reasoned opinions in both written and spoken forms. Through class activities, they will also experience key components of the democratic process, such as working together, learning to respect the views of others, and various conflict resolution techniques.

Unit Format

The teacher's guide, like the student book, is organized into units. Each begins with a **Unit Overview**, parallel to the **Purpose of Unit** sections of the student text. These provide a brief introduction to the forthcoming group of lessons. Each unit of the teacher's guide concludes with a **Student Unit Review**.

Lesson Format

The teacher's guide is designed to complement and extend the student text. Each lesson begins with a **Lesson Overview** to describe the overall purpose of the lesson. This section of the guide parallels the **Purpose of Lesson** in the student text.

Next is a list of **Lesson Objectives**, written in behavioral terms. These are similar to the list of behaviors found in the introduction to each lesson in the student text. Students can be expected to be able to perform these tasks upon completing each lesson. The material is conceptually cumulative, however, so mastery is not expected or required at each step along the way.

Teaching Procedures follow. These are suggested instructional strategies which you can adapt for your particular learning environment. They include ideas for introducing the lessons, additional information about lesson topics, discussion questions, answers to activities when appropriate, and debriefing ideas. This section generally ends with an activity for concluding the lesson.

Optional Reinforcement and Enrichment Activities complete each section of the guide. These include individual, small, and whole group activities. They employ a variety of techniques and develop a number of skills helpful in studying conceptually oriented material. You may wish to duplicate these activities to have on hand for students to select for extra credit work. These activities also can easily be adapted as part of your lesson presentation.

Purpose of Activities

The activities presented within each lesson are designed to facilitate student achievement of the cognitive objectives listed at the beginning of each unit and lesson. In addition, they also are designed to promote certain dispositions and participatory skills which increase student capacity to act effectively as citizens in the political process. These include the capacity to work cooperatively with others to reach common goals and the capacity to deal with conflicting opinions and positions in a constructive manner. For example, activities should promote students' capacities to

- work effectively individually or in small group or class efforts
- use democratic procedures in gathering information and making decisions on an individual and group basis
- understand the positions of others who may differ and respect their right to hold such positions
- establish goals individually and as a member of a group and work effectively to achieve them
- serve in leadership roles
- take, defend, and evaluate positions on controversial issues

Testing: Evaluating Student Achievement

The first Critical Thinking Exercise in Lesson 1 can be used as a **pre-test** for the program. As you will see from scanning the activities and exercises in the student book and those suggested in the teacher's guide, the materials lend themselves to both performance and portfolio assessment.

For **unit testing**, the **Student Unit Review** handouts can be duplicated and distributed. They include a review of the key concepts and terms presented in the student text. In addition, each unit review offers students a chance to express and justify their own personal views on constitutional issues of their choice. Students should not be graded on the nature of their opinions, but upon their ability to analyze constitutional issues and support their personal opinions about them in a thoughtful, reasoned manner.

In the instructional packet accompanying the student text, you will also find the **Test on the History and Principles of the Bill of Rights**. This consists of sixty multiple-choice questions to assess your students'

knowledge of program concepts as well as the functions, sources, applications, and limitations of key provisions of the Bill of Rights.

Docent Strategy

As you know from your own experience, a teacher often learns as much, if not more, than his or her students through the process of teaching a subject. You may wish to give students this same experience by dividing them into docent groups.

Each group would be responsible for one of the units in *With Liberty and Justice for All.* These groups would not only help conduct activities and host classroom visitors during work on a particular unit, but would also take responsibility to do extra research, create class bulletin boards and annotated timelines about unit topics, help structure learning center materials for the unit, and present special projects and reports on unit topics to the rest of the class. They might also help other students study and prepare for the lessons and exercises of that particular unit.

Class Projects

In conjunction with their study of the Bill of Rights, you may wish to assign individuals and groups of students special projects to complete during the course of this program. Such projects might include:

- keeping a program journal or notebook of ideas and opinions about the Bill of Rights
- collecting articles, headlines, news clippings, cartoons, and photographs on various aspects of the Bill of Rights to use for collages, bulletin boards, hallway displays, and posters.
- establishing a Bill of Rights Learning Center in the classroom or school library
- forming a Community Visitors Committee to invite and host outside professionals who participate in special activities such as class debates, moot courts, congressional simulations, and school forums.
- founding an "It's Your Bill of Rights" student club to publicize current issues concerning citizen rights and responsibilities in your community

Other suggestions for class projects will be made throughout the course of the student text and teacher's guide.

Conducting Class Discussions

The history of our Bill of Rights and subsequent amendments has included much controversy, debate, evaluation, and reevaluation. So, too, is the study of this document. Civic education often entails presenting and discussing controversial subject matter. Of course, that is what makes it so exciting for students and teachers alike. Through the process, students develop decision-making skills, conflict management experience, and a commitment to citizenship participation.

To help make this experience stimulating and rewarding for both you and your students, you may wish to consider the following hints for successful classroom discussion of controversial issues and contemporary topics:

- When addressing controversial issues, encourage students to examine and present conflicting views. Be sure to allow ample time to explore all sides of an issue.
- Emphasize the legitimacy of various viewpoints.
- Be honest. Don't try to whitewash the times when we have not lived up to the ideals and principles upon which our nation was founded and the Bill of Rights conceived. By examining how the interpretation and application of the Bill of Rights has varied over time, students will appreciate both the fluidity of our constitutional system, which allows for peaceful change, and the role they can play in helping our nation better realize its goals.
- Try to present the central issues of controversy in tangible form. Make allusions to the problems and dilemmas students face in their own lives. Help them identify specific points of agreement or disagreement, places where compromise might be possible, and places where it is unlikely to occur.
- In general, discuss ideas or positions rather than individuals associated with a controversy. Conflicting attitudes should be presented in an unbiased fashion. Students should be encouraged to present dissenting opinions if they do not agree with the majority of the group—even if they are the only ones to dissent. Encouraging such expression underscores the importance of our First Amendment freedoms, helping make them a reality for students during their classroom experience.
- Emphasize the importance of reaching a reasoned decision, expressing it in a civil manner, and respecting the views of others. Stress that in controversial issues, reasonable people might very well differ. Nowhere is this better illustrated than in the debates which occurred among the Founders themselves over the Bill of Rights. By having students explain the positions of others as well as justifying their own opinions, they will learn to respect and understand varying viewpoints and gain a better appreciation of the increasingly diverse and pluralistic nature of our society.
- Always remember to conclude or debrief an activity or discussion by summarizing the arguments and exploring the likely consequences of the various alternatives your students have suggested.
- Finally, emphasize that by learning how to discuss, manage, and evaluate controversial issues, your students will develop an appreciation of the importance of controversy, compromise, and consensus. They are the lifeblood of a democratic society. Nowhere is this more vividly portrayed than in the creation, adoption, and continuing interpretation of our Bill of Rights which, because of the liberties it protects, makes this dialogue and process possible.

Encouraging Small Group Learning

The activities presented in the student text and teacher's guide are designed for individual study, group work, and cooperative learning in which each individual's participation is essential for the successful completion of the group's task.

Even when students work independently, they should be encouraged to share their work with others and receive feedback from their peers. In adversarial learning models, such as appellate court simulation and congressional testimony and debate, students should work together during debriefing to reinforce and critique each other's efforts. You also may wish to pair students as study partners. They can complete certain activities together, check each other's work, and challenge each other's opinions.

For effective group work, studies show that groups of five are generally most successful in terms of creating an active learning group dynamic. Groups should be heterogeneous and students encouraged to take turns fulfilling leadership tasks, such as group recorder or spokesperson.

To promote successful and active cooperative learning, be sure to monitor group work and act as a resource to guide your students' development. Most important, encourage each member of the group to participate in some way. Suggestions for doing so are made in the student text and teacher's guide.

In evaluating students' efforts, note that they should be developing not only academic expertise, but also interpersonal skills useful in all areas of their lives. To assist students, you may wish to distribute the following handout, based on the work of D.W. Johnson and R.T. Johnson of the Cooperative Learning Center of the University if Minnesota. This self-evaluation check list should be completed by each student at the end of each activity. (All ten items will not be relevant to each activity.)

Self-Evaluation Check List

_____ 1. I contributed my ideas and information.

_____ 2. I asked others for their ideas and information.

_____ 3. I summarized the ideas and information of others.

_____ 4. I shared my materials.

_____ 5. I asked for help when I needed it.

_____ 6. I helped the other members of my group.

_____ 7. I helped make sure everyone in my group understood the activity.

_____ 8. I helped the group keep on task.

_____ 9. I included everyone in the group in planning and discussion.

_____ 10. I respected the opinions of each individual in the group.

© Center for Civic Education
Limited reproduction rights gratned for school use only.
With Liberty and Justice for All

Enhancing Instruction

Visiting Professionals. As noted above, during this course of study you may wish to invite outside resource persons to participate in or evaluate program activities. Special classroom visitors provide a change of pace for you and your students. They can share their first-hand knowledge and experience with the subject matter and serve as role models for your students. Specific suggestions are made both in the teacher's guide and student book of people who can enliven and enrich your study of the Bill of Rights. Due to busy schedules and the limited length of this program, it is advisable to extend these invitations as soon as possible. A committee of students should write the formal invitations and host the guests on the day of their visit.

Remember that your guests most likely will not be trained educators. Consequently, they may feel uncomfortable about serving in this capacity. For a successful visit, send them in advance a copy of the lesson in which they will be participating. Follow up with a meeting or telephone call. Reassure your guests that you will take charge of classroom management, and that they will only be required to share their particular knowledge or expertise. On the day of the visit, be sure to caution your guests not to use professional jargon and to speak as simply as possible. After the visit, be sure to have students write a letter of thanks.

Learning Centers. As noted earlier, you may wish to work with students to establish a Bill of Rights Learning Center. Your school librarian might assist you and perhaps offer to house the center in the school library so that it can be shared with other classes. In addition to the texts suggested in the **Bibliography** at the end of this guide, you also may wish to include recent Supreme Court reports, available from your local bar association or public library, as well as relevant magazine, newspaper, and journal articles.

Your librarian might also suggest documentaries and films which raise issues about our rights and responsibilities. For example, during the study of Unit Three, you might include the Public Broadcasting System's award-winning series, *The Prize*, about the fight for civil rights and equality for African Americans, or during the study of Units Four and Five, *Guilty By Suspicion*, a film about the McCarthy Era which raises both First Amendment and Fifth Amendment issues.

Parent or Guardian Letter. Schools obviously do not bear the sole responsibility of developing citizenship. Families play a critical role. You may wish to encourage family involvement and improve school-home relations by sending the following letter to the parents or guardians of your students. It informs them of the program and encourages them to participate by reinforcing the concepts and skills taught in *With Liberty and Justice for All.*

Dear Parent or Guardian,

It is my pleasure to announce that your child will be participating in a special program about the Bill of Rights during this school semester. *With Liberty and Justice for All*, developed by the Center for Civic Education, encourages your child to understand the rights and live up to the responsibilities of citizenship.

Our constitutional democracy depends upon enlightened and responsible citizens. The learning experiences of this program are designed to teach students about our Bill of Rights, develop the skills necessary for successfully participating in our democratic system, and encourage them to preserve the rights protected by our Constitution.

You can help reinforce what your child is learning in the classroom by asking about the program and discussing current events relevant to the study of our rights and responsibilities. Most important, please include your child as much as possible in citizenship activities with which you yourself are involved, such as a block meeting on community safety, a local service organization campaign, a citizen group or political party event, a voter registration drive, or a school board meeting.

Invite your child to accompany you when you vote. Ask his or her opinion on a petition being circulated at your local supermarket. Discuss the evening news. Together write a Letter to the Editor of your local newspaper about a recent Supreme Court decision, act of Congress, or state law which affects your rights as Americans.

Through such activities, you can actively take part not only in your child's education, but in underscoring the importance of knowledgeable citizen participation. By doing so, you will help ensure that those denied freedom in the past will never lose it in the future, and that the liberties we have today will be enjoyed two hundred years from now.

If you have any questions about this program or would like to volunteer to participate as a school aid or classroom visitor, please contact me at _____. I look forward to hearing from you.

Sincerely,

Introducing the Program

Before turning to the text, you may wish to conduct a pre-test. To do so, duplicate and distribute the questions from Critical Thinking Exercise 1 from Lesson 1. This will enable you to assess your students' general level of knowledge and attitude towards the subject. Afterwards, ask the class to turn to the **Table of Contents**.

As your students scan the unit and lesson titles, stress that this program presents a history of ideas. Then have them read the **Preface**. Briefly review the main points:

- the definition of the Bill of Rights
- the purpose of the Bill of Rights as a check on the power of government in order to protect the rights of individuals
- the influence of the Founders' historical knowledge and personal experiences on the development of the Bill of Rights
- the evolution of our thinking about rights and their extension to groups denied them in the past
- the interrelationship of rights and responsibilities

You also may wish to write the terms "Framers," "Founders," and "federal government" on the chalkboard for easy reference.

Next present the lesson organization to your students. Note that each lesson in the student text begins with the **Purpose of Lesson**. This section describes what students will be expected to be able to do upon completion of the lesson. Explain to your class that one way to review lesson materials is for them to "test themselves" by seeing if they can complete each of the tasks listed.

In most lessons, the **Terms to Know** follow. These important terms are highlighted upon first usage in the text and defined either in the text itself, in the **Glossary**, or in a standard dictionary. (It is assumed that students will work with a dictionary on hand.)

The lesson itself contains both narrative text and **Critical Thinking Exercises** which students will complete either individually or in small and whole groups. Note also the use of captions for the illustrations which ask both factual and critical thinking questions.

In certain instances, you may wish to assign the reading to be done prior to class. At other times, you may not wish students to read ahead, but rather lead them through the reading in class. The text is often integrated with the Critical Thinking Exercises in such a way that structured class reading is a preferable learning strategy. (Suggestions are provided in the guide.)

Lessons conclude with the **Using the Lesson** section. The questions and activities in this section allow students to both review the material studied and to apply that material to contemporary situations.

Timelines are included in each unit to help students gain a sense of the historical context of the key material presented in that unit.

In the **Appendix**, students will find copies of the Virginia Declaration of Rights, the Declaration of Independence, the Constitution and Bill of Rights, and the Universal Declaration of Human Rights. Note that the Constitution and Bill of Rights are highlighted to make it easier for students to locate key passages.

Note: You may wish at this point to ask students to keep a **Bill of Rights journal** in which they can keep written assignments and record their own thoughts and feelings about the rights they are studying and their contemporary significance. You may also wish to inform your students of class projects and unit review tests if you plan to assign them.

Planning Ahead

Before proceeding, explain to your class that during the course of this program, they will be discussing constitutional issues which have been hotly debated for centuries. They will not always agree with their neighbor about these issues. There may be subjects about which they have very strong personal feelings. Emphasize that in order to successfully engage in and learn from such discussions, it is important to lay down some basic ground rules, such as the following:

- When expressing an opinion, always be prepared to justify it.
- It's fine to advocate your position forcefully, but do so in a reasoned and civil manner.
- Always argue ideas, not personalities.
- Politely and respectfully listen to the opinions of others.
- In the interests of personal privacy, do not use actual names when sharing personal knowledge of situations involving issues of rights.

An Introduction to the Study of the Bill of Rights

Introduction Overview

The introductory unit serves as a framework for the rest of the text, setting out the main themes and helping students clarify their ideas about the Bill of Rights. Through a series of critical thinking exercises, students will consider the purposes of the Bill of Rights, the protections it offers, and the limitations it places on the government. Students will also learn that the Constitution and Bill of Rights are not the only legal protections for our rights. They will be introduced to some of the issues involved in the relationship between rights and responsibilities. Finally, they will be able to analyze the right of freedom of the press in a particular situation, that of the Persian Gulf War. This exercise will allow them to consider when it may be necessary to limit certain rights to protect others.

Introduction Objectives

At the conclusion of this unit, students should be able to

1. explain the purposes of the Bill of Rights
2. identify the rights contained in the document
3. describe other legal protections for rights
4. take and defend positions on the relationship between rights and responsibilities
5. explain the importance of studying the historical background of rights
6. explain considerations used in limiting rights
7. take, defend, and evaluate positions on issues involving freedom of the press

Introducing the Introduction

Have students read the **Purpose of Introduction**. Explain that the three introductory lessons will help introduce the topic and provide them with a set of systematic ways to examine and make decisions about their rights and responsibilities. They will be able to use these methods in future lessons and reinforcement activities, as well as in their daily lives.

Lesson 1

What Do You Know About the Bill of Rights?

Lesson Overview

The first lesson is designed to introduce students to the Bill of Rights and assess how much they actually know about the first ten amendments to the Constitution. The lesson opens by asking students what they remember about the Bill of Rights. They will then analyze the First Amendment and consider what protections of rights and limitations of power it offers. After completing this analysis, students will read the Bill of Rights itself and complete the third critical thinking exercise. The critical thinking exercises in this lesson are designed so that the first one lays the foundation for the second, and the third builds on the work students have done in the first two exercises. In the third exercise, students should be able to compare their original assumptions about the Bill of Rights with the protections actually contained in the document.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the basic purposes of the Bill of Rights
2. explain sources of threats to rights that are not protected by the Bill of Rights

Teaching Procedures

A. Introducing the Lesson

Have students read the **Purpose of Lesson** and identify what will be expected of them upon completion of the lesson. Point out the captions that accompany each illustration. Have students answer these factual and critical thinking questions as they proceed through the lesson.

Note that this first lesson is unique because it contains three **Critical Thinking Exercises** to introduce the concept of a bill of rights. In doing these exercises, your students will examine their knowledge of the Bill of Rights, analyze the First Amendment, and then reexamine their initial ideas about the purpose of the Bill of Rights.

B. Introducing the Critical Thinking Exercises

Tell your students that the activities they will be completing in this and subsequent lessons are critical thinking exercises. These exercise will help them learn to develop and defend reasoned positions on

constitutional issues and to evaluate the positions of others. Students should understand that knowledgeable and reasonable people may differ on many of the issues they will be discussing. On such issues there may not be a single, correct answer which all can agree upon. Their goal should be to develop and discuss alternative positions on such issues in order to understand them thoroughly and to take reasoned positions on them.

C. Critical Thinking Exercise I: Examining Your Knowledge of the Bill of Rights

The three exercises contained in this lesson will help your students begin their study of the Bill of Rights. If you have not already used the first exercise as a pre-test, have students work individually or with a study partner to answer the questions. If you have already administered the exercise as a pre-test, return to it now in a group discussion.

At this point, you are only trying to assess initial student views, knowledge, and misconceptions. There is no need to do too much correction at this juncture. Rather, encourage the continuing and hopefully evolving flow of ideas through each successive exercise.

In response to the first question, the rights most students probably will be familiar with are those covered by the First Amendment and possibly some of the rights mentioned (and often misquoted) in "Miranda warnings," popularized by many television shows and movies. Often the initial answers students will give to the second question will be "from the police." In that case, you might wish to ask leading questions such as: Are other members of the government also likely to violate your rights? Does the Bill of Rights also protect you from them?

Finally, the third question will most likely elicit a wide range of responses. In discussing student answers to this question, you may wish to begin raising the issue of individual responsibility in terms of the exercise and protection of rights, as well as the role played by federal and state legislation, court decisions, and state constitutions. Note, however, that at this point you are only introducing these topics, all of which will be more fully explained in later lessons.

D. Critical Thinking Exercise II: Examining the First Amendment

The second exercise gives students a concrete example of one of the amendments listed in the Bill of Rights. Through analyzing its language, students will begin to clarify their thinking about what the Bill of Rights does and does not do.

If your students are unclear about what an amendment is, define it at this time, reminding them that our Bill of Rights consists of the first ten amendments to the original Constitution that were added after the Constitution was ratified. (Students will learn about this process in greater detail in later units.)

The questions in these exercises presume a certain degree of knowledge. It may be necessary for you to clarify terms such as "branches of government" or "limits of power." If you feel that your students do not have the academic background to complete this exercise in small groups, you may wish to conduct it as a whole class discussion.

If not, divide the class into small groups. Have them select a **recorder** and **group spokesperson**. Over the course of the program, all students should have the opportunity to fulfill these group leadership roles.

Travel between the groups to facilitate discussion. This will be particularly important during the first class if your students are not accustomed to group work. Be sure to emphasize in your instructions to the class, that in this and subsequent exercises, students may try to reach a consensus, but it is not required. Individuals or small numbers of students might disagree with the majority of their group. If so, they should issue minority reports or individual dissents. In such instances, the group spokesperson should present a summary of all opinions to the class. After the group reports have been made, hold a class discussion.

The last question in Exercise II raises once again the issue of whether the Bill of Rights in and of itself is enough to guarantee an individual's rights. Once again, lead students to consider the role played by federal and state legislation, state constitutions, court decisions, and individual actions in protecting rights.

E. Critical Thinking Exercise III: Revising Your Answers to the First Exercise

Having taken a brief look at an actual amendment from the Bill of Rights, students should now have a clearer view of what the Bill of Rights does and doesn't do—at least on the surface. This will probably lead to a revision of the opinions students expressed in the first exercise.

Work with students to reconsider the first set of questions. Have students refer to the Bill of Rights in the **Appendix** and revise their answers to the first set of questions accordingly.

F. Concluding the Lesson

To conclude the lesson, ask students to express in general terms what they have learned by completing the three exercises. Refer back to the **Purpose of Lesson** section which states that upon completion of Lesson 1, students should be able to explain some of the basic purposes of the Bill of Rights. Have students volunteer those purposes. Write their ideas on the chalkboard to refer to at later points in the program.

You may wish to ask students to copy this list in their program journals and continually revise it as they work through the program.

Finally, you may wish to refer to the **Using the Lesson** questions to expand discussion or as written homework assignments which students can complete in their program journals.

Optional Reinforcement and Enrichment Activities

1. **Clipping Project**. Have students work as study partner pairs or in small groups to complete this project. Assign each pair or group a clause from the Bill of Rights. (You also may wish to assign rights included directly in the body of the Constitution, such as *habeas corpus* or the prohibition of *ex post facto* laws.) Students should collect articles, headlines, cartoons, and photographs which identify and raise constitutional issues associated with the particular clause they have been assigned. The clippings can be used for research purposes by the whole class or for bulletin board and hallway displays. Store the clippings in files or notebooks in the Bill of Rights Learning Center.

2. **Personal Recollections.** Have students write a short story or poem about an experience they have had exercising or being denied a certain right or freedom. Students may wish to record readings of their stories or poems on audio or video tape to share with others.

3. **School Survey.** Have volunteers conduct a survey of the school population—administrators, teachers, support staff, and students—about the Bill of Rights. Use the questions posed in the three Critical Thinking Exercises in this lesson as a guide for the survey. Have students tabulate and publish the results in your school newspaper.

Lesson 2

Where Are Legal Protections of Your Rights Found?

Lesson Overview

This lesson helps students understand that, in addition to the Bill of Rights, there are other protections for individual rights. State constitutions, state and local laws, congressional legislation, and court decisions (both federal and state) offer legal protection for our rights.

The lesson opens with an exercise that presents three examples of violations of rights, only one of which is protected by the Bill of Rights. Students are then asked to examine a well-known statement by Judge Learned Hand that "liberty lies in the hearts of men." This exercise serves as an introduction to considering the relationship between rights and responsibilities. Finally, students learn that the Founders believed it was necessary to limit the power of the government and protect individual and minority rights against majority rule.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. identify various legal protections of individual rights
2. explain how the Constitution and Bill of Rights were intended to limit government power and protect against the abuses of majority rule
3. explain threats to rights from sources other than government
4. take, defend, and evaluate positions on the relationship between rights and responsibilities

Teaching Procedures

A. Introducing the Lesson

Begin the lesson by referring back to your previous discussion and the list students made of the purposes or functions of the Bill of Rights. Have the class read the **Purpose of Lesson.** It explains that Lesson 2 will take a look at some of the same questions they discussed earlier. Note what your students should be able to accomplish upon completion of the lesson.

Next ask a student to read aloud the **Terms to Know** and write them on the chalkboard. As each is defined in the context of the lesson, you may wish to write the definition alongside the term or have students do so in their program journals. Also be sure to have students discuss their answers to the factual and critical thinking questions posed in the captions.

B. Critical Thinking Exercise: Identifying Laws That Protect Your Rights

Have students work individually or with a study partner to read each of the three situations described in this exercise and answer the questions which follow. Then hold a class discussion, contrasting and comparing the three situations.

Ask students to identify who has violated the rights of the individual in each case. Note that in the first instance, a private company is at fault and in the second, an individual. Explain to your students that the Constitution and Bill of Rights were written to limit the power of the federal government, not govern the relationships between individuals or private entities. Therefore, the Bill of Rights does *not* cover the incidents described in the first two examples. Rather, state and federal laws have been written to protect consumers from unlawful business practices or from personal theft.

Constitutional protections are only involved in the general sense that people create government to protect their rights to life, liberty, and property. It is the obligation of government to pass laws to protect an individual's property and to see that these laws are enforced. The Bill of Rights was designed to protect the rights of individuals from abuse by the federal government.

In the third case, however, it is the government that has violated the rights of the individual to peacefully assemble and to receive due process of law. This third example, therefore, raises issues covered by the Bill of Rights.

Once again, these points will be repeated throughout the program. Mastery of this knowledge is not expected at this point. Instead, the activity is designed to encourage students to begin thinking about constitutional issues and refine their ideas about the function and application of the Bill of Rights.

C. Reading and Discussion

The narrative which follows the activity presents a key theme—the limitation of government power. The Bill of Rights limits the power of the federal government in order to protect individual rights. Later amendments and court interpretations have extended most of the provisions of the Bill of Rights to cover state and local government actions as well.

Explain that sometimes the government is prohibited from certain actions and sometimes it is required to take certain actions. Ask students to give examples of each category. As you read through the narrative, make a chalkboard list of ways that individual rights are protected—aside from the Bill of Rights.

If your students are unfamiliar with your state constitution, you may wish to take a few moments to read some of its articles, showing your students the types of protections it includes. Each state constitution contains certain provisions which parallel protections found in the Bill of Rights, as well as others not found in the federal document. Present examples of each to your class.

You also may wish to ask them for examples of criminal and civil laws. Note that sometimes incidents involve both criminal and civil law. For example, if a person ran a stop sign, hit and damaged another car, and injured its passengers, both civil and criminal laws would have been broken.

Finally, refer back to your discussion during Lesson 1 about the interrelationship between rights and responsibilities. To encourage your students to explore this issue, complete the next critical thinking exercise.

D. Critical Thinking Exercise: Analyzing Judge Hand's Statement

This exercise should be completed in small groups. Students should analyze the statement and discuss their views about it. If your students need extra help, you may wish to have them paraphrase each section of the statement and then justify their reasons for agreeing or disagreeing with it. Once again, have a recorder keep notes of the discussion. A selected spokesperson should use these notes when presenting the group's opinions to the rest of the class.

During the class discussion, ask students to volunteer concrete examples of civic responsibilities, both those all citizens have and those citizens have after age eighteen. Ask leading questions to encourage students to delve deeper into this topic. For example:

- Does having the right to vote mean you have a responsibility to exercise that right?
- Does having the right to a free press imply the responsibility to stay informed?
- Does having the right to a trial by jury imply the responsibility to serve on a jury?
- Does the fact that you have certain rights imply the responsibility not to violate the rights of others?
- Does the fact that you have certain rights obligate you to see that other Americans enjoy those rights as well? Other people in the world?
- Should there be laws to require individuals to exercise their rights and fulfill their civic responsibilities? For example, should there be a law to require people to vote?
- If you see someone's rights being violated by a government official, such as excessive force being used to arrest a person, what is your civic responsibility?
- If you see another person denying others their right, for example, to stage a peaceful demonstration, what is your responsibility?

Afterwards, discuss the final question concerning the implications of Judge Hand's point of view. Or you may wish, instead, to assign this question as homework. Students can write their answers in a short essay to be shared at a later date with the class.

E. Concluding the Lesson

To conclude the lesson, read through the last narrative section with your class. Emphasize that the Constitution and Bill of Rights are based on the belief that the major purpose of government is to protect individual rights to life, liberty, and property. These are natural rights all individuals deserve to have simply because they are human beings. This point will be elucidated throughout the text, particularly in the section on the natural rights philosophy in Unit One.

During the discussion of this last narrative section, you may wish to write the following phrase on the chalkboard: "Majority Rule with Protection of Minority Rights." Many students misunderstand the nature of majority rule, not appreciating that governments based on majority rule, as well as dictatorships and monarchies, can violate the rights of individuals. Ask students for examples from American or world history of government violation of individual or minority rights.

Note, however, that there have been times when powerful minorities, such as aristocracies or corporate interests, have exerted undue influence over government, which in turn led to the violation of the rights of individuals.

One way to examine this point is to return to the example of the First Amendment from Lesson 1. In a government based on majority rule, why would the Founders want to prohibit Congress from passing laws to establish a state religion? What might happen if there was no such prohibition?

Also, you may wish to have students look back at the answers they gave to the exercises in Lesson 1. How would they revise their initial responses about the Bill of Rights after completing Lesson 2?

To conclude the discussion, you may wish to ask the questions posed in **Using the Lesson** if you have not already covered these points. Alternatively, selected questions can be assigned as written homework. Once again, refer to the lesson objectives as a way for students to review the lesson material.

Finally, ask your students to take a few minutes to write down their responses to the criticism that Americans are obsessed with their rights at the expense of promoting the common welfare of society. What should be considered when trying to decide how to respond to this criticism? What important interests and fundamental values are at stake? Have students jot down their ideas in the form of an outline for an essay in their program notebook. Upon completion of this program, they can revise their outline and write the essay.

Optional Reinforcement and Enrichment Activities

1. **Legal Interview**. Have students interview a judge, attorney, law student, court clerk, or paralegal about the differences between criminal and civil law, and the differences between these laws and our fundamental constitutional law. They should use the information to create a chart about the subject to display in class.
2. **Sci-Fi Rights**. Have students write a science fiction radio play about a planet where there is unlimited majority rule. The play should highlight what might happen to the rights of individuals and minorities. Have the playwrights work with classmates to record the radio play. Place the tape in the Learning Center to share with others.
3. **Collaborative Poem**. Ask small groups of classmates to work together to create a collaborative poem based on the ideas expressed in Judge Hand's statement, as well as their own opinions about the relationship between individual rights and responsibilities. Share the poems with the class at a poetry reading or on the bulletin board.
4. **Non-Citizenship Report**. Have selected students research the rights and responsibilities of non-citizens, and contrast and compare them to those of citizens. Have them make an oral report to the class or write a report about rights, responsibilities, and citizenship.

Lesson 3

How Can Studying the History of Rights Help You Deal with Contemporary Issues?

Lesson Overview

This lesson will help students understand the importance of studying the historical background of the rights included in the Constitution and Bill of Rights. It will provide a brief historical review of how the right to freedom of the press developed in England and the United States.

Students will examine how, in a democratic system, freedom of the press includes the right to know what the government is doing. Students will have the opportunity to consider what limitations, if any, should be placed on freedom of the press during a wartime situation. They will then complete an exercise which helps them analyze the issues of rights and government limitations that arose during the Persian Gulf War.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain general considerations used in limiting individual rights
2. describe some of the historical background of the right of freedom of the press
3. describe the importance of the right to know and its relation to freedom of the press
4. explain the issues involved when the public's right to know conflicts with the government's responsibilities during wartime
5. take, defend, and evaluate positions regarding the limitation of the right to freedom of the press during wartime

Teaching Procedures

A. Introducing the Lesson

Begin by reading the purposes of the lesson and identifying what students can expect to be able to do upon completion. Ask a student to read aloud the **Terms to Know** and write them on the chalkboard. Write definitions of the terms as you and your students proceed through the lesson. Also be sure to have students discuss their answers to the caption questions as they proceed through the lesson.

You may wish to ask students:

- Why might studying the history of the Bill of Rights be useful in helping you decide how these rights should be interpreted, applied, and limited in today's world?
- How is contemporary America similar to what it was like in 1787? How is it different?
- How might these similarities and differences effect how the Bill of Rights is interpreted and applied today?

Make group assignments for this lesson. Afterwards, distribute sections of the morning newspaper to each group. Have students page through the paper, finding articles, headlines, cartoons, and photographs about (a) rights in general, (b) the violation of rights, (c) the fight to obtain certain rights, or (d) the debate over the application and limitation of rights. Have them share their findings with the class. Students should reserve the articles for later discussion.

B. Reading and Discussion

Ask students to read the first section of narrative text entitled "Examining the history of specific rights." During discussion, stress that government power is limited by prohibiting government violations of rights. Note, however, that there is a second type of limitation discussed when talking about the Bill of Rights—limitations on the exercise of these rights. Ask your class why individuals living in a society cannot have unlimited freedom. Given this fact, what should be the basis for limiting individual freedom?

To help your students begin to explore this issue, ask them for examples of rights they would (a) never, (b) seldom, or (c) occasionally be willing to limit. To simplify this exercise, suggest rights to categorize in this manner, such as the right to

- publish whatever you like about a person
- hold certain moral or ethical beliefs
- practice your religion
- use your property in whatever way you wish

In instances in which students would be willing to limit rights, ask them "under what circumstances?" If unwilling to limit a right, ask why. In what ways are there differences between these rights?

After reading the next narrative section, "When should rights be limited?" have students compare and revise their points of view about limiting rights. Were their reasons for limiting rights similar to those listed, that is, to protect the rights of other individuals or the welfare of the entire community? Can they suggest other reasons for limiting individual rights?

Explain to your students that during the course of this program, they will be developing guidelines for applying and limiting individual rights. They may wish to make notes in their program journals of the interests and values they think are important to consider in this regard.

C. Preparing for the Critical Thinking Exercise

To prepare for the Critical Thinking Exercise, have students read the next narrative section, "The right to freedom of the press." You may wish to share with them the actual statement of Virginia's royal governor, Sir William Berkeley, in 1671:

I thank God we have no free schools and printing [presses], and I hope we shall not have [them] these hundred years. For learning has brought disobedience & heresy & sects into the world; and printing has divulged them and libels the government. God keep us from both.

Ask students why they think Berkeley linked public education and freedom of the press with disloyalty to the government and religious heresy. What do they think Berkeley would say about our First Amendment freedoms if he were alive today?

D. Critical Thinking Exercise: Examining the Right to Freedom of the Press

Have a member of each group take turns reading aloud one of the questions in this exercise and directing discussion of it, calling on students for their opinions and asking further questions to facilitate discussion.

In the course of the discussion about the licensing act, you may wish to note that Britain had and still has an established state church, the Anglican Church, of which the monarch is the head. What impact might a state established religion have on freedom of the press? Refer students back to their discussion of the First Amendment in Lesson 1.

In discussing the libel and sedition laws, note that these were in effect in the United States *after* the adoption of the Constitution and Bill of Rights. Students should understand that the Founders had a narrower view of freedom of the press than we do today. That is why some of the same people who supported the First Amendment also supported the Sedition Act of 1798.

You also may wish to note that at the time the Bill of Rights was ratified, it only prohibited the federal government from certain actions. It did not apply to actions of the state governments. (Students will learn about the Fourteenth Amendment and incorporation of the Bill of Rights in Unit Three.)

Finally, ask your students to look back at the newspaper articles they discussed at the beginning of this lesson. Which of the articles they discussed might a repressive, totalitarian government or dictator want to censor and why?

E. Reading and Discussion

Have students read the next narrative section. Remind them that under the Constitution, the people are the ultimate source of the authority of government. Students will learn more about this concept through discussing the social contract theory and other fundamental tenets of the natural rights philosophy in Unit One.

Note that the "right to know" is not expressly stated in the First Amendment (refer students back to Lesson 1). Rather it is implied by it and by our whole system of self-government. For example, would a person be able to be a knowledgeable voter if he or she could not exercise the right to know? You may wish to note that a number of states have right to know laws. If your state has specifically protected this right constitutionally or legislatively, be sure to mention it to your students.

Before proceeding to the next narrative section, take a quick opinion poll. Draw three vertical lines on the chalkboard, each about five inches apart from the other. Above the line on the left, write "No Right to Limit Free Expression and the Right to Know." Above the line on the far right, write "Some Limits on Free Expression and the Right to Know." Ask your students on which side they stand—or would it be somewhere in the middle. What interests, values, and principles should be considered when deciding if, when, or how to limit these rights?

Begin to narrow the field of discussion by having your students read the next narrative section concerning the right to know during wartime. This should help them begin to refine their thinking. Have them compare their initial responses about limiting rights earlier in the lesson with the points made here about access to information and freedom to report information. You may wish to raise issues about who should be making these decisions. Should the courts, Congress, or other government agencies set the limits? Should the media be self-regulating according to certain ethical and professional standards? What role, if any, should the average citizen play?

In balancing the welfare of the nation with the public's right to know, individuals stand to gain and lose something on either side of the issue. There are competing interests involved. In certain cases, one set of interests may weigh more heavily than another. Explain that often debates over rights are not black and white, but concern the gray areas. Through the experience of trying to make such decisions themselves, students will gain a better appreciation of the issues and the process, as well as a greater respect for those who struggle with these delicate decisions on a daily basis.

F. Critical Thinking Exercise: Analyzing Issues of Rights

As final preparation for the exercise, have students read," What issues of rights were involved during the Persian Gulf War?" They should then work in groups to answer the questions provided. A group recorder should take notes for the spokesperson to use in his or her report to the class. Once again, note that the group may issue majority and minority reports if they cannot come to a consensus. Each student should be prepared to take and defend a position.

Stress the role of the average citizen in the debate. Individuals, as well as news organizations, testified before Congress, and many ordinary citizens expressed their views by writing to their representatives, sending letters to be published in newspaper and magazine opinion pages, and expressing themselves on radio and television talk shows. Using these examples, discuss individual civic responsibility in regard to this First Amendment debate.

Finally, you may wish to mention that the censorship issue has been raised in every American war. Different solutions were devised in each historical period. The Gulf War had a new wrinkle because of satellite cable technology which led to virtually "instant" reporting. Often the president, state department officials, and military advisors learned of situations via cable television at the same time average viewers did. Other issues involved the use of the media by foreign heads of state to reach the American public, as well as the strategic use of reported information by enemy military personnel.

While discussing your students' views on the limitation of rights through this particular issue, be sure to ask them what important interests and fundamental values and principles they considered when arriving at their opinions.

If your students are unfamiliar with talking about important interests and values, you may wish to guide discussion by asking them to consider how limiting the right to know and freedom of the press in this instance might have an impact on the following:

- **Important interests** such as national security, financial costs, environmental costs, or costs in terms of human resources.
- **Fundamental values** such as personal liberty, human dignity, human life, right to travel, and the right to privacy.

Note: Congressional Committee Simulation. You may wish to complete this exercise as a simulation of the hearing held by the Committee of Government Affairs. Students should play the roles of congressional representatives conducting the hearing, military and state department officials, and media experts who testified. Those playing the parts of congressional representatives should prepare a list of thought-provoking questions to ask those who are testifying. Those testifying should prepare brief statements expressing their points of view, based on the questions provided in the student text. Afterwards, debrief the activity as suggested above, having students express their own opinions. Note that these opinions might not necessarily reflect those of the persons they played during the simulation.

G. Concluding the Lesson

To extend discussion, you may wish to read some of the following quotations and have your students express their views about them in terms of the activity they have just completed. Or you may wish to assign pairs of students to research the following cases. After completing their research, students should present oral arguments to the class to spark discussion of free press issues. These presentations might also be made during the further study of freedom of expression in Unit Four.

Be sure to remind students, when considering court decisions in controversial cases, that reasonable people differ on these issues, and that the majority opinion need not be considered the "right answer."

- *Near v. Minnesota* (1931). The Supreme Court ruled that the government is prohibited from ordering a newspaper not to publish malicious or scandalous information. The majority opinion said that "it has been generally, if not universally, considered that it is the chief purpose of the [First Amendment] to prevent previous restraints on publication....The protection even as to previous restraint is not absolutely unlimited. But the limitation has been recognized only in exceptional cases [for example] the publication of the sailing dates of transports or the number and location of troops."

- *Lovell v. Griffin* (1938). The Supreme Court invalidated an ordinance prohibiting the distribution of handbooks, advertising, or literature without first obtaining written permission from a public official. The justices wrote that the ordinance "strikes at the very foundation of the freedom of the press by subjecting it to...censorship....While the freedom from previous restraint...cannot be regarded as exhausting the guarantee of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision."

- *New York Times v. U.S.* (1971). The Supreme Court ruled that the government could not impose prior restraint when the Nixon administration tried to prevent the publication of the "Pentagon Papers." Some of the justices were concerned that "for the first time in 182 years since the founding of the Republic, the federal courts are asked to hold that the First Amendment does not mean what it says, but rather means that the government can halt the publication of current news of vital importance to the people of this country....Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints....The government's power to censor the press was abolished so that the press would remain forever to censure the government. Only a free and unrestrained press can effectively expose deception in government....Only governmental...proof that publication must inevitably, directly, and immediately cause the occurrence of an event kindred to imperiling the safety of a transport already at sea can support even the issuance of an interim restraining order."

Finally, note that the questions presented in the last exercise will be useful in examining other issues of rights. Ask your students if they can think of other questions to ask themselves when determining how a right should be applied or limited.

End the class by considering some or all the questions listed in **Using the Lesson**. Alternately, these can be assigned as written homework questions.

Optional Reinforcement and Enrichment Activities

1. **Dear William Letter**. Share the statement Governor Berkeley made about freedom of the press with selected students. Have them write him a letter stating why they agree or disagree with the points he made.
2. **Right to Know Debate**. Have students debate whether a specific right-to-know amendment should be added to the Constitution. Each side should present a three-to-five minute argument in favor or against the proposition. Allow each team two minutes for rebuttal. You may wish to invite a staff member from your congressional office to participate in judging the debate along with a group of student judges.
3. **Responsibility Essay**. Have students write an essay about their responsibility in terms of freedom of the press and the right to know.
4. **Gulf Media Issues Report**. Have students research and report further issues involving the media and the Gulf War, such as the role of satellite technology or the debate over cable news reporters "aiding and abetting the enemy." Have the students make an oral report to the class.

Unit One

What Did the Founders Learn About Rights from History and Their Own Experiences?

Unit Overview

This unit presents the main ideas and experiences that shaped the Founders' views about rights. It gives students an introduction to the philosophical foundation of the Founders' thinking about the purpose of government and the need to protect individual rights. Students will examine the ideas about rights that were developed during the classical periods in Greece and Rome, during the Middle Ages, and those that emerged as a result of the changes brought about by the Reformation and Renaissance. The Founders were also influenced by their experiences as British subjects and by the 150 years of virtual self-government they enjoyed under a system of "benign neglect" on the part of Parliament.

Students will examine the development of rights in England by examining three historic documents: the Magna Carta, the Petition of Rights, and the English Bill of Rights. They will then review the experiences of the Founders in the colonies and the events that led to the American Revolution. The Founders' belief in the importance of protecting individual rights led to the creation of state constitutions that clearly spelled out these rights and served as models for the Bill of Rights.

Unit Objectives

At the conclusion of this unit, students should be able to

1. describe the ideas about rights held by the classical republicans
2. explain how the Renaissance and Reformation led to an increased emphasis on the importance of individual rights
3. explain the influence of the natural rights philosophy on the Founders' ideas about individual rights
4. explain the influence of British history on the Founders' ideas about individual rights
5. explain how the differences between colonial America and Europe affected the Founders' beliefs about rights
6. explain how the state declarations of rights reflected the Founders' ideas about the purpose of government and the protection of individual rights
7. take, defend, and evaluate positions on the importance of specific rights claimed by the Founders

Unit Introduction

Have students turn to Unit One and read the **Purpose of Unit** section. Explain that the unit introduction summarizes the key themes which will be explored in this unit:

- individuals have certain natural rights simply because they are human beings
- government is necessary for safety and security, but it is also the greatest threat to individual rights
- constitutions should be written to limit the power of government in order to prevent it from abusing the rights of the people
- the political and philosophical ideas of the Founders were based on their knowledge of history as well as their own experiences in self-government

You may wish to write these key themes on the chalkboard for reference during the unit.

Next, introduce students to the unit **Timeline**. Each unit will contain a timeline of key events relevant to the development and interpretation of our rights and responsibilities. The facts contained in the timeline are for reference only. It is not intended that students memorize these facts and dates.

You may wish to have unit docents create a classroom timeline noting important events relevant to the topics of this unit. Have students write the names and dates of key events on 3 x 5 cards, with one or two sentences explaining why the event was significant. Tape the cards around the classroom walls or on a bulletin board for reference.

Planning Ahead

You will find a chart helpful in teaching Lesson 4 in the **Teaching Strategies** section of the lesson. You may wish to duplicate it for your students or write it on the chalkboard for reference prior to class.

Lesson 4

How Did Our Ideas About Individual Rights Develop?

Lesson Overview

This lesson provides an overview of how ideas about rights developed throughout history and the influence of these developments on the Founders. Students will examine the ideas of the classical periods of ancient Greece and Rome. They will be introduced to the theory of classical republicanism with its emphasis on promoting the common welfare. Students will also look briefly at the ideas about rights held during the Middle Ages. With this background, students will be able to see how the religious and economic changes brought about by the Reformation and Renaissance led to a greater emphasis on individual rights. This lesson lays the foundation for studying the ideas of the natural rights philosophers and the political theories of the Founders.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the ideas about rights that predominated during the Greek and Roman Republics, the Middle Ages, the Renaissance, and the Reformation
2. explain the difference between the rights of individuals and the rights of groups
3. explain how the Renaissance and the Reformation contributed to the growth of individual rights
4. take, defend, and evaluate positions on the different ideas about rights studied

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As students proceed through the lesson, have them discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Reading and Discussion

To introduce the idea of group rights and duties, take a few minutes to ask the class what groups they belong to, such as their families, class, school, sports team, church or temple group, political party, or other organization. Expand the concept of "groups" to include socio-economic, ethnic, and linguistic groups, and finally membership in the group of American citizens or legal aliens living in the United States. Ask students what rights and duties go along with membership in these various groups.

Next, have your students read "What is meant by the rights of groups?" Ask students, as they proceed through the next sections, to compare the types of groups they belong to with those of past societies. In what ways are the rights and duties of various groups in the past similar or dissimilar to the rights and duties of various groups today? What do these similarities and differences imply about the nature of our society versus that of past societies?

Four historical periods which particularly influenced the Founders' views about rights are identified in this lesson: the republics of ancient Greece and Rome, the Middle Ages, the Renaissance, and the Reformation. As you proceed through the lesson, you may wish to create a chart comparing the ideas about rights, duties, and government prevalent in each historical epoch.

To prepare such a chart, write the names of the four periods on the board. As you read through the narrative and discuss it with your students, write key phrases describing what the Founders learned about rights, duties, and governments from each period. Explain that the emphasis in this text is on what influenced the Founders, not on other aspects of these historical periods. A suggested chart follows. You may wish to duplicate and distribute it to your students.

Lesson 4 Study Chart

Classical Republics

- small, fairly homogeneous society governed by the people through those chosen to represent their interests
- government should promote the common welfare, not the interests of any one group or class
- citizens should exhibit civic virtue and work cooperatively to achieve the common welfare, rather than pursue their own self-interests
- individual rights should be limited in the interest of the common welfare
- citizens should have those political rights necessary for participating in government
- moral education should promote civic virtue
- community needs an established religion to promote common moral and ethical values

Middle Ages

- feudal society composed of hereditary, established classes and economic groups
- rights and duties derived from membership in a class or group
- society as a whole would benefit by each individual fulfilling the proper role and obligations of his or her group
- system of mutual rights and obligations in which the king gave land to his nobles in exchange for military or other service

Renaissance

- rise of capitalism
- changing nature of class structure, particularly rise of the middle class
- greater emphasis on private interests and individual accomplishments
- greater distribution of economic and political power
- growing emphasis on guilds and various groups as pressure and interest groups, rather than as rigid parts of a feudal system
- developing values of individualism, private competition, and achievement of success through hard work as opposed to the feudal view of hereditary membership in non-fluid groups

Reformation

- developing challenges to traditional church and state authorities
- continuing development of the middle class and new political and economic interest groups which rivaled older, established, hereditary classes and groups
- greater emphasis on individual education, expression, and communication through advancing technology and changing social, political, and economic social structure
- new emphasis on the value of equality
- belief that individual should work for common good of the community while also pursuing economic self-interests
- growing economic prosperity leading to greater emphasis on individual rights

© Center for Civic Education
Limited reproduction rights granted for school use only.
With Liberty and Justice for All

C. Reading and Discussion

Have students read through the section entitled, "What ideas about rights are found in classical republicanism?" You may wish to place each idea on a chart after it has been identified and discussed. After reading this section, ask students to compare:

1. the individual and political rights Roman citizens enjoyed with those enjoyed by American citizens today
2. the type of moral education they receive with that of their Roman counterparts
3. our republic with the Roman republic in terms of diversity of races, ethnic groups, religions, languages, cultural value systems, and interest groups. How might differences in the degree and type of diversity affect the nature of a republic?

D. Critical Thinking Exercise: Understanding the Basic Ideas of Classical Republicanism

Have students work individually, with a study partner, or in groups of three or four to analyze classical republicanism and make further comparisons with our republic today. Students should be prepared to summarize their points of view and justify them to the rest of the class.

E. Reading and Discussion

Have students read through the remaining narrative sections, filling in the chalkboard chart as you proceed through each section. Then have students complete the exercise which follows.

F. Critical Thinking Exercise: Understanding the Effects of the Renaissance and Reformation on Ideas About Rights

Once again have students work individually, in study pairs, or in groups of three or four to analyze these historical periods in terms of their influences on the Founders' views about rights and responsibilities. Encourage students to project the importance of these concepts on our everyday lives through the "What do you think?" questions. You may wish to use this exercise as a jumping-off point for identifying contemporary issues related to the concepts discussed in this lesson, for instance:

- **Diversity.** Should there be an official language for the United States?
- **Common Welfare.** Should citizens be required to have a toxic waste dump in their state if it would promote the welfare of the nation?
- **Group Rights.** Should members of certain groups be given preferential treatment in terms of hiring or educational opportunities?
- **Civic Virtue.** Should public school curricula place greater emphasis on moral or character education?
- **Individualism.** Should greater limits be placed on individual expression for those artists receiving government funding?

G. Concluding the Lesson

To conclude, survey your students' views about some of the key concepts and ideas presented in this lesson. Ask them to state whether or not they agree with each of the following statements. Have them write down their opinions in their program journals.

1. It is important for citizens to be concerned about the entire community and not just their own selfish interests.
2. Every individual is born with certain rights.
3. People deserve to be given certain rights because they are members of a particular group.
4. For a society to work well, every citizen should obey the laws, live according to certain values, and volunteer to do his or her share to promote the common welfare.
5. If it is necessary to choose between protecting the rights of individuals or promoting the safety and good of the whole society, individual rights are more important.

Ask students to identify which statements deal with the common welfare, civic virtue, and individual and group rights. At the end of the program, they may wish to reread their opinions and possibly revise them, stating their reasons for doing so.

Present the **Using the Lesson** questions as an extension of class discussion or assign them as written homework. The fourth question could be addressed through a science fiction magazine interview of time-travelling Romans.

Optional Reinforcement and Enrichment Activities

1. **Identifying Key Concepts in the News.** Ask students to monitor one week of radio or television news broadcasts, including local, national, and international news. They should make a list of news stories which raise issues about the common welfare, civic virtue, and individual and political rights. Students should share the list with classmates, discussing ways in which these concerns from the past are alive in contemporary society.
2. **Talk Show on Republicanism.** Have students simulate a talk show about the following proposition: "It is clear from the problems which exist in the United States today that a republic is not the best form of government for an increasingly diverse society." One student should play the host, Oprah Donahue. Two other students should be guests, speaking for and against the proposition. Other students should play the members of the studio audience, answering questions posed by the host and offering opinions about the statements made by the two guests. You may wish to videotape the show to replay for other class members at a later time or at a school open house.
3. **Cartoon History.** Have students create a series of cartoons to illustrate ideas about individual rights and responsibilities during the four historical periods identified in this lesson.

Lesson 5

What Influence Did the Ideas of the Natural Rights Philosophers Have on the Founders?

Lesson Overview

This lesson introduces students to the natural rights philosophers, especially Hobbes and Locke, whose ideas about individual rights had a great influence on the Founders. These philosophers believed that all people have certain natural rights, and the purpose of government is to protect these rights. Furthermore, to best protect people's rights, government must be limited and based on the consent of the people. The ideas of the natural rights philosophers, when combined with the historical experiences of the Founders as British subjects, formed the basis for our Constitution and Bill of Rights.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the historical events that led to the natural rights philosophy
2. explain the major ideas of the natural rights philosophers and their influence on the Founders
3. identify ideas of the natural rights philosophy in their own thinking, in our government, and in contemporary events

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then ask a student to read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Then direct your students' attention to the first term, "natural rights." Have students take a minute to list rights they think they have simply because they are human beings. To help them do so, you may wish to ask the question, "What are the things that all people always need and seek, no matter what they believe or where and when they live?" Students should save their lists to refer to later in the lesson.

B. Reading and Discussion

Have students read the first section of the narrative which reviews some of the key points made in the last lesson and introduces the idea of the natural rights philosophy.

As you work through the next narrative sections with your class, create a chart on the chalkboard comparing classical republican ideas with those of the natural rights philosophers. You may wish to invite a student to the board to write down the ideas you compare and discuss. To encourage discussion, ask how these two philosophies differed in their views on (a) the composition of society, (b) the common welfare, (c) individual rights, and (d) civic virtue. The resulting chart should look something like the following:

Lesson 5 Study Chart

Topic	Classical Republicans	Natural Rights Philosophers
a. society	collection of groups	collection of individuals
b. common welfare	major goal of society	subordinate to protection of individual rights
c. individual rights	limited to political rights and some property rights	all rights necessary to protect life, liberty, and property
d. civic virtue	required of all to promote common welfare	participation in government only important to protect individual rights

During class discussion, stress that the natural rights philosophers and the Founders believed that the purpose of government should be the protection of the natural rights of the people who create the government.

End discussion of this section by having students compare their lists of rights with the three areas of rights identified by the natural rights philosophers. Do the rights your students listed fall into these three categories? In what ways are their thoughts similar to and different from those of the natural rights philosophers?

Once again be sure to emphasize that there is no "right" answer. To a large degree, the debate about rights and the application and limitation of them, reflects the tension between the classical republican model and that of the natural rights philosophers. This tension and its impact on the way Americans have historically viewed their rights and responsibilities will become clearer throughout the course of this program.

C. Critical Thinking Exercise: Thinking like a Philosopher

This is an excellent activity for cooperative group work. Have small groups of students imagine what life would be like in a state of nature and what individuals would do in such a situation to protect their rights. Each student in the group should be asked to submit at least one idea in response to each question. The group recorder should summarize these responses for a spokesperson, selected by the group, to share with the entire class.

D. Reading and Discussion

Have students read the next narrative sections and compare their ideas with those of the natural rights philosophers. You may wish to ask students the following questions:

- **Human nature**. Do your students agree with the statement that, in every society, there will be those who try to take advantage of others and deny them their rights?
- **Purpose of government**. Do your students agree with the statement that government is necessary to enforce rules and punish the violators of them?
- **Who should govern**. Do your students agree with the statement that no one has the right to govern unless chosen by those who are to be governed?
- **Civic obligations**. Do your students agree with the statement that once people have consented to be governed in a certain way, they have the obligation to support that government and abide by its laws?
- **Limiting government power**. Do your students agree with the statement that government power must be strictly limited in order to protect the natural rights of individuals?

Your students should justify their reasons for agreeing or disagreeing with each of the above statements. In many cases, they may wish to qualify their answers. For example, even if one consents to be governed, there may be times when it is against one's conscience to obey a law passed by fairly and justly chosen representatives. Note that such a qualification underscores the importance of protecting an individual's natural rights, such as the right of conscience, from the majority who have selected the government representatives.

Finally, stress the one basic qualification that the natural rights philosophers placed on individual rights—namely that an individual may not interfere with the freedom of other individuals in the society. Because government is designed to protect the rights of individuals, it has the duty to prevent persons from exercising their rights in such a way that they interfere with the freedom of others to enjoy life, liberty, and property.

E. Concluding the Lesson

Conclude the lesson by asking students to read the last narrative section. Ask them to reiterate why American colonists found many of the ideas of the natural rights philosophers so attractive. Have students express whether, at this point, they lean more towards the views of the natural rights philosophers or those of the classical republicans.

Finally, discuss the **Using the Lesson** questions or assign them as written homework. Note that question six would be excellent as a group oral report project, making use of the clippings that students have been collecting.

Optional Reinforcement and Enrichment Activities

1. **Political Cartoon.** Have students create political cartoons to illustrate the concept that government is the servant, not the master, of the people.
2. **Consent Editorial.** Ask your students when they consented to be governed. Naturalized citizens clearly consented when they took the oath of citizenship. Should native-born Americans take a similar oath, formally consenting to be governed? Is such a ritual necessary? What would be its advantages and disadvantages? Have students evaluate this idea in a one-page editorial.
3. **Philosophical Dialogue.** Have two students write or tape a discussion about the nature of society, common welfare, individual rights, and civic virtue. One student should speak from the classical republican viewpoint and the other from the viewpoint of the natural rights philosophers. Share the tape at the learning center.
4. **Word Association.** Have students give themselves and other members of the school community the following word association test. Afterwards, they should compute and analyze the results. Would most of the school community fall in the classical republican or natural rights philosophy camp? Have students publish the results in the school or local newspaper.

   What is the first thing that comes to your mind when you hear the following words: freedom, equality, independence, rules, property, authority, liberty, responsibility, happiness, law, government, safety, power, order, security, justice, virtue, and peace?

Lesson 6

What Did the Founders Learn About Rights from Studying British History?

Lesson Overview

This lesson helps students understand the influence of British history on the Founders' ideas about rights. It examines the events and legal documents that helped secure the rights of Englishmen. The lesson concentrates on three historic documents: the Magna Carta, the Petition of Rights, and the English Bill of Rights. Students will examine how each of these documents expanded the legal protections of individual rights in England. Particular attention is paid to the English Bill of Rights, its influence on the Founders, and the ways in which it differed from the American Bill of Rights. To reinforce the importance of these protections, students will complete a critical thinking exercise in which they examine two basic rights, *habeas corpus* and trial by jury.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the development of individual rights in British history and the significance of the Magna Carta, the Petition of Right, and the English Bill of Rights
2. explain the basic ideas about rights and government contained in the above documents
3. explain what values and interests are protected by the specific rights discussed
4. take, defend, and evaluate positions on the importance of the specific rights discussed and on what limitations, if any, should be placed on them

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions. They should also jot down the similarities and differences between the documents which established certain rights in Britain and our own Bill of Rights. Explain that you will be referring to this cumulative list later in the lesson.

B. Reading and Discussion

Read through the first narrative section with your class about the traditional rights of Englishmen. Note the statement that these rights are based on custom as well as written law.

It is important to stress throughout this and the next two lessons that the American colonists, as British subjects, claimed they were entitled to the rights of Englishmen and would wage a revolution to secure them. They also based their colonial and state legal systems on many of the rights, principles, and procedures of British common law.

After reading the section on the Magna Carta, ask students to summarize the most important points in the narrative. Their ideas should be similar to the following:

- The British constitution is not a single, written document like our own, but is composed of traditional rights and customs, acts of Parliament, and common law.
- The documents which over time have become part of the British constitution were written to limit the power of the Crown and developed out of often violent struggles with the monarchy.
- Many of the British documents concerning rights pertained to the rights of certain social groups and Parliament, rather than the rights of the individual citizen.
- The Magna Carta was based on the following principles which later influenced our own Constitution and Bill of Rights: the rule of law, the social contract, basic inviolable rights, and representative government.

Finally, note the statement of the primary goal of this program which is to help students have a better understanding and appreciation of their rights in order to preserve them.

C. Critical Thinking Exercise: Analyzing and Evaluating Specific Rights

Proceed with this small group activity as in the past, having students select a recorder and spokesperson. Students should work together to analyze and answer the first five questions. Each student should be prepared to express his or her personal opinions about the last question. The spokesperson should then present a majority and, if necessary, minority report to the class.

Guide discussion to highlight the contemporary relevance of the principles expressed in the Magna Carta, as well as the specific rights it prohibited the Crown from violating. Once again remind students of Judge Hand's views (Lesson 2) and ask them to express what responsibilities they believe they have regarding their rights. In discussing the final question, you may wish those who have been collecting clippings to note instances of violations of rights, both within and outside of the United States.

D. Reading and Discussion

In beginning the readings of the next narrative sessions, ask students to give examples from history or their own personal experience of times when rights, though established by custom or law, have been violated in practice. What does this fact imply about the responsibility of citizens regarding their rights?

Note that some of the rights established by the Petition of Right were later included in our own Bill of Rights, such as the Third Amendment which prohibits the federal government from quartering troops in

private homes during peacetime. Stress that this right was included in our Bill of Rights both because of the Founders' knowledge of it being violated by the Crown at various times in British history and their own experience with the violation of this right during the American colonial period.

In discussing established religion in terms of the English Bill of Rights, refer back to class discussion of the First Amendment in Lesson 1. Ask students to compare our Bill of Rights with the English Bill of Rights in terms of the establishment of religion.

Have students compare the list of key concepts contained in the English Bill of Rights with those in the Magna Carta, which they discussed earlier in the lesson. Note especially the ideas of the rule of law, Parliamentary supremacy, government by consent, and the balance of powers.

During this discussion, note in particular the difference between parliamentary sovereignty (or supremacy) and popular sovereignty. This difference would have a great impact on the conflict between the British government and the American colonies in the years just prior to the Revolution.

Note also that the concept of checking and balancing the powers of government in order to safeguard rights is found in the English Bill of Rights. This precedent would have a profound influence on the Framers of our Constitution, who later established a government of separation of powers and checks and balances.

Finally, before proceeding to the narrative section entitled "How does the American Bill of Rights differ from the English Bill of Rights?" ask students to refer to the list of similarities and differences which they have been making during the course of this lesson. Ask them to compare the British documents with our Bill of Rights in terms of (a) the purpose of the specific documents and (b) the specific rights established.

E. Critical Thinking Exercise: Analyzing and Evaluating the Importance of the Rights to *Habeas Corpus* and Trial by Jury

In this exercise, students will take a closer look at two of the rights guaranteed in our Constitution whose antecedents lay in British history. Both these rights are discussed in more detail in Unit Five. You may wish to refer to that unit if you feel your students need more background before completing this exercise. It should be noted, however, that the exercise is designed to be completed based on what the students have learned so far in the text.

You may wish each group to consider both rights or assign one particular right to each group. Note that trial by jury is conceptually somewhat easier, should you want to take that into consideration in making group assignments.

After students have had an opportunity to examine the rights, assign each group one of the following roles to play: monarchs and members of the royal family, members of Parliament, lawyers for the accused, family of the accused, and prosecutors for the Crown. Spokespersons for each group should speak for or against establishing these rights, based on the likely opinions of those being portrayed.

To debrief the activity, have students express their own personal views by answering the "What do you think?" questions.

F. Concluding the Lesson

Ask students to read the last narrative section entitled "How did the English experiences affect the Founders' beliefs?"

Ask them to imagine that they are the Founders of our nation. Based on what they have learned so far, what would they expect a constitution and bill of rights to achieve? What do these goals imply about the responsibilities of citizens?

Finally, have students answer the questions posed in **Using the Lesson** during a final class discussion or as written homework.

Optional Reinforcement and Enrichment Activities

1. **Dear John.** Have students write "Dear John" letters to King John from the point of view of either the barons at Runnymede or commoners who wish to establish and secure their rights.
2. **Historical Sources Bulletin Board.** Have students create a bulletin board about rights we enjoy today which have a historical source in one of the documents studied in this lesson.
3. ***Habeas Corpus* Research Project.** Have a group of students begin collecting information from newspapers, magazines, law journals, and Supreme Court reports about contemporary issues concerning *habeas corpus*. They should plan to present their findings to the entire class when procedural due process is examined in Unit Five.
4. **Point/Counterpoint—Written or Unwritten?** Have two students work together to make a list of the pros and cons of a having written constitution. Have them present their ideas to other classmates by recording one-minute "point/counterpoint" editorials.

Lesson 7

How Did the Differences Between American and European Society Influence the Founders' Beliefs About Rights?

Lesson Overview

In this lesson students will examine the social and economic differences between colonial America and Europe and see how these differences shaped the Founders' beliefs about rights. The colonists enjoyed far greater economic, social, and political opportunities than people did in Europe. These advantages led them to believe in the importance of government protection of rights, especially the right to property. Students will be given a brief overview of the experiences that led to the American Revolution and examine the principles over which the colonists and the British differed. In essence, Americans fought to protect their rights which they believed the British government was violating.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain how the differences between colonial America and Europe affected the Founders' beliefs about rights
2. explain the relationship between political and property rights
3. describe those groups in the colonies that did not enjoy the political and economic rights possessed by others
4. explain the experiences and ideas that led to the American Revolution and the specific rights claimed by Americans
5. take, defend, and evaluate positions on the Founders' ideas about property rights

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Critical Thinking Exercise: Examining an Original Document About Colonial Life

Have students work individually or in pairs to examine the excerpt from colonist Philip Taylor's diary. After discussing the answers to the first two questions, encourage students to project how Taylor might have viewed the three laws discussed in the third question. What statements in the diary led them to make these assumptions? Do they enjoy these rights today?

Use this discussion to lead into the narrative reading section which will examine the similarities and differences of life in Europe and colonial America.

C. Reading and Discussion

As you read through the next two narrative sections with your class, have a student come forward to list on the chalkboard the rights that male property owners generally enjoyed in colonial America. Note that not all free male property owners enjoyed the same rights. Religious restrictions in certain colonies, for example, limited the right to vote and hold political office.

Emphasize that Americans believed that the rights they enjoyed during the colonial period belonged to them as British subjects. The Revolution was fought primarily to preserve these traditional rights, rather than acquire new ones. This is a point often misunderstood by students.

In the course of your discussion, ask students to explain why American political thinkers believed that

- if property is not secure, neither is liberty
- while government is meant to protect rights, it is also the greatest threat to them

In noting the rights protected by the Massachusetts Body of Liberties, ask students why they think certain rights for non-voters were protected.

Then ask students to compare the rights most white male property owners enjoyed with the rights of women, free blacks, and slaves. You also may wish to offer some examples of the extremely limited freedoms that some slaves were permitted. In certain areas of New England, for instance, male slaves elected a king, sheriff, and judges to preside over slave courts where minor disputes between slaves were settled. The judges could declare guilt or innocence and pronounce punishment, usually flogging.

Slave owners hoped that these limited freedoms would prevent slave rebellions from occurring. It should be noted that these limited freedoms were at the discretion of the owners and could be denied at any time. Nevertheless, these instances of limited self-government did help African Americans maintain some cultural identity.

D. Critical Thinking Exercise: Evaluating the Importance of the Right to Property

Have students work independently or in small groups to complete this activity. A recorder should keep notes of the discussion and opinions for a spokesperson to use during class presentation.

E. Reading and Discussion

Direct a discussion of the next narrative section about the Founders' views and experiences which led to the Revolution. Once again emphasize that, from the Americans' point of view, they waged a revolution to secure their traditional rights, rather than to claim new ones. It was only after trying all peaceful means for the redress of their grievances, that the patriots moved to violence.

To highlight the differences in the American and British points of view, you may wish to divide the class into two groups, one representing Parliament's position and the other that of the colonists. To augment this discussion, you may wish to share the following statements which represent both the colonial and parliamentary positions.

- **Lord Rockingham**: "Colonies and plantations in America have been and of Right ought to be subordinate to the Imperial Crown and Parliament of Great Britain."
- **Benjamin Franklin**: "If you choose to tax us, give us members in your Legislature and let us be one people."
- **Eliphalet Dyer**: "[King George] seems determined to fix upon us a large Number of regular troops under pretence of our Defence, but rather designed as a rod and check over us."
- **Nathanial Folsom**: "[We aim] to secure and perpetuate [our] Rights, Liberties, and Privileges and to restore that Peace, Harmony, and mutual Confidence which once happily subsisted between the Parent Country and her Colonies."
- **Sir George Grenville**: "It is [entirely justifiable] that a revenue be raised in your Majesty's Dominions in America for defraying the expenses of defending, protecting, and securing the same."
- **Patrick Henry**: "A king by annulling laws...forfeits all rights to his subjects' obedience."
- **Rev. Jeremy Belknap**: "The true friends of constitutional liberty now saw their dearest interests in danger from the assumption of power in the parent state to give and grant the property of the colonists at their pleasure....This [was a] direct and violent attack on our dearest privileges....To submit was to rivet the shackles of slavery on ourselves and our posterity."

Finally, refer back to one of the fundamental precepts of the natural rights philosophers, that of the social contract. How did this concept lie at the core of the debate over popular sovereignty versus parliamentary sovereignty?

F. Critical Thinking Exercise: Identifying Violations of Rights

To complete this activity, you may wish to have students work in groups, preferably with five students in each. Each student should take responsibility for one of the historical personages. Students should

role play a tavern discussion. Each person should describe the rights violated and what rights he or she would want to claim. Have the recorder for the group keep notes of the discussion for the spokesperson to summarize to the entire class.

As the various rights are noted during class discussion, make a list of them on the chalkboard. The list will most likely include the following:

- freedom of expression
- freedom from cruel and unusual punishment
- freedom from having troops quartered in your home
- freedom from unreasonable searches and seizures
- due process protections

You may wish students to look in the **Appendix** and note which constitutional amendments were later written to prohibit the federal government from violating these rights (First, Third, Fourth, Fifth, Sixth, and Eighth Amendments).

G. Concluding the Lesson

Have students read the last narrative section. You may wish to turn to the Declaration of Independence in the **Appendix** of the student book to review colonial grievances against the Crown—in Jefferson's words, "a long Train of Abuses and Usurpations....Design[ed] to reduce them under absolute Despotism."

Particularly note the violation of rights discussed in this lesson. Once again emphasize that the Revolution was fought primarily to preserve the rights of life, liberty, and property that Americans had traditionally enjoyed, rather than to secure new rights.

Finally, discuss the main lesson points, using the **Using the Lesson** questions as a guide. Alternately, these questions can be assigned as written homework.

Reinforcement and Enrichment Activities

1. **Petition for Property Rights.** Have students pretend they are free men and women in colonial America. Have them write a petition for full property and political rights for African Americans based on the natural rights philosophy.
2. **Meet the Founders.** Have a small group of students stage a "Meet the Press" talk show about the Founders' experiences which led to the Revolution. Students should play the parts of reporters and talk show guests. The guests can be well-known patriots like Thomas Jefferson, Patrick Henry, and Abigail and John Adams, or the lesser known colonists described in the last critical thinking exercise of the lesson. Have the students perform the show for the class or tape it for later viewing.

3. **Women's Rights Pamphlet**. Have students create a pamphlet or broadside defending or opposing the idea that the new nation should give women the right to vote and hold political office. Students may wish to consider the following views of natural rights proponents.

   - **Montesquieu**: "Our authority over women is absolutely tyrannical. They have allowed us to impose it only because they are...more humane and reasonable than we."
   - **Catherine McCauley**: "It is ridiculous to think ladies are all slaves by nature."
   - **James Otis**: "Are not women born as free as men?...If every man and woman born or to be born has a right to be consulted and must accede to the original compact before they can with any kind of justice be said to be bound by it, will not the compact be ever forming and never finished?"

Planning Ahead

You may wish to have copies of your state constitution on hand for the next lesson, possibly duplicating the declaration of rights section for your students.

Lesson 8

What Rights Were Protected by the New States?

Lesson Overview

In this lesson students will have the opportunity to see how the Founders utilized the ideas they had learned from their study of the past and from their own experiences as British subjects. One of the first tasks of the Founders was to create new state governments. All adopted written constitutions before the U.S. Constitution was created in 1787. Most states also wrote declarations or bills of rights which clearly stated the rights of the people that must be protected by government.

Students will examine in some detail the first of these declarations, the Virginia Declaration of Rights, which served as a model for other states. These state bills of rights included most of the protections later found in the Bill of Rights, although there were important differences between the state documents and the federal bill that was ratified in 1791.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the purpose of the state declarations of rights
2. describe the main components of the Virginia Declaration of Rights
3. explain the essential similarities and differences between the state declarations and the federal Bill of Rights.
4. take, defend, and evaluate positions on what rights they would include in a bill of rights

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Reading and Discussion

Have students read the first narrative section. You may wish to refer to your state declaration of rights, noting when it was written, where it is placed in your state constitution, and highlighting its similarities and differences with the Bill of Rights.

Stress the important point that all state declarations of rights were based on the idea that people have certain natural rights which must be protected from the government. State declarations sought to achieve this goal by prohibiting state governments from violating certain rights. Later, the federal Bill of Rights would contain similar prohibitions pertaining to acts of the federal government.

Note, however, that at many times in our nation's history, state declarations alone were not sufficient to protect the rights of citizens from violation by their state governments. Your students will learn more about this point in later lessons.

C. Critical Thinking Exercise: Evaluating Slaves' Claims for Rights

Divide the class into groups to complete this exercise. Certain groups should be given primary responsibility for representing the views of (a) legislators who favored granting the petition or (b) legislators opposed to granting the petition. Have each group analyze the slaves' petition, discussing the questions in the exercise. Students should then make a list of points they wish to make in favor of the position to which they have been assigned. Afterwards, reconvene the class. Have a spokesperson from each group speak in favor or against the slaves' petition, justifying their reasons for doing so.

To debrief the activity, ask students to express their own views about the slaves' petition. What important interests, such as the need for a united political front against the British or the immediacy of the war, should be considered? What important values, such as principles of equality and liberty, should be considered? Having taken into account these important interests and values, what decision do you think the New Hampshire legislators should make?

In discussing this activity, you may wish to note that the slave leaders were all men who had held positions in the limited self-government system allowed New Hampshire slaves. (See Lesson 7 of the Teacher's Guide.) Some of the men had served as king and others as judges and sheriffs. What impact might these experiences in limited self-government have had on the slaves' opinions and actions?

You also may wish to discuss the views of two supporters of the Revolution. The first, Joshua Atherton, was a legislator and a delegate to the state convention called to ratify the Constitution. The second, Reverend Jeremy Belknap, was a historian and a founding member of an anti-slavery society after the Revolution.

> *I am not ready to invade a sister state and force slavery to an end. However, I am also not willing to be part of a [government] that encourages and profits from slavery.*
>
> Atherton

> *When shall we be consistent? When shall it be a felony to steal men as much as to steal money?*
>
> Belknap

Finally, you may wish to extend the class discussion to include the idea of giving women full political rights. In what ways can the arguments for extending rights to slaves be adapted to apply to women? Are there any additional arguments which could be made for women's rights? What important interests and values should be considered in determining the rights of women?

D. Reading and Discussion

Have students read about and discuss the Virginia Declaration as a forerunner of and model for the Bill of Rights. (A copy of the Virginia document is included in the **Appendix**.) Have students rank the influences of classical republican thought and natural rights philosophy on the authors of the Virginia Declaration. To do so, use a 1-3 scale, with 1 being "very little" and 3 being a "great deal." In preparing their scale, students should consider whether the Virginia declaration includes the following ideas:

- classical republican view of (a) civic virtue, (b) common welfare, and (c) political rights
- natural rights idea of (d) social contract, (e) individual rights, and (f) limited government

Students' answers should reflect the fact that this and other state declarations combined ideas about rights and government which represented both classical republicanism and the natural rights philosophy.

Have students note any other influences they can see in the state declarations of rights. Ask them to state their opinions about which historical experiences of the colonists seemed to have the greatest influence on the authors of the state declarations.

Then, after reading the last narrative sections in the lesson, have students summarize the ways in which the state declarations and the Bill of Rights are similar and dissimilar. Note particularly that state constitutions generally protected rights first and only after doing so, created governments of limited power. The federal Constitution, written at a different time and for somewhat different reasons, at first contained no bill of rights. When it was added, the Bill of Rights was included as a series of amendments, rather then incorporated directly into the body of the original Constitution. In the next unit, students will learn why the Framers chose this course of action.

E. Critical Thinking Exercise: Creating a Bill of Rights

This activity is designed to help students correlate what they have learned so far with the actual task of writing a bill of rights. The purpose is *not* for them to come up with a copy of the document found in the **Appendix**. In fact, encourage them to consider additional rights, such as a specific protection of the right to privacy, similar to that found in many state constitutions. To encourage such extended thinking, you may wish to share some of the amendments concerning rights which have been suggested in recent years. For example, they may wish to consider the right to medical care or a job, as well as an equal rights amendment, balanced budget amendment, or a right-to-life amendment.

Groups of students should discuss the rights they want protected. They should make a list of these rights and their primary reasons for wanting to safeguard them. It may be helpful for students to talk about the rights in categories, such as natural rights, political rights, due process rights, rights of personal expression, and economic and property rights. Have the groups share their lists. Group recorders should then save the lists for further discussion during work in Unit Two.

F. Concluding the Lesson

To conclude the lesson, ask students why they think our Declaration of Independence and Bill of Rights have been so influential throughout the world. Ask them to offer examples of places in the world today where people are struggling to create societies and structure governments modeled after the ideals and principles upon which our own government is based. In their opinion, which of these ideals and principles

are most relevant or influential on contemporary societies in transition? Why? (You may wish Unit One docents who have been collecting clippings on this issue to update the class.)

To review key concepts and extend the lesson discussion, consider the questions posed in **Using the Lesson.** Alternatively, you may wish to assign these as written homework. Finally, have students volunteer what they consider to be the most important things they have learned in this unit about their rights and responsibilities.

Optional Reinforcement and Enrichment Activities

1. **Dear Tom Paine.** Share revolutionary Thomas Paine's statement about rights with students: "I conceive a bill of rights should be a plain, positive declaration of the rights themselves." Have them write Paine a letter, in their program journals, stating whether or not they agree with him.
2. **Mapping World Progress.** Have a small group of students report to the class about nations and societies in the world which are in transition—designing new governments, writing new constitutions or legal systems, or struggling with human rights issues. The report should take the form of a world map with pins placed in appropriate locations. Correlated 3 x 5 cards or a specially designed key should describe the situation in each society and the ideas about rights and government under debate.
3. **State Bill of Rights Chart.** Have students analyze a copy of their state bill of rights and compare it to the federal Bill of Rights. Have them complete a chart similar to the example given below. Students should decide which rights they wish to compare. They may wish to invite an attorney, judge, or court representative to class to help discuss and compare the provisions. In what ways are the documents similar? In what ways are they different? What might have caused these differences?

Sample Lesson 8 Study Chart

Right or Freedom	State Constitution	U.S. Constitution
To enjoy life, liberty, and property	Part I, Article 2	Fifth Amendment Fourteenth Amendment
To seek and obtain happiness	Part I, Article 2	no counterpart
To bear arms	Part I, Article 2a	Second Amendment
Not to be compelled to bear arms	Part I, Article 13	no counterpart

Student Unit Review

You may wish to reproduce the following **Student Unit Review** for your students. The entire review may be used as a unit test, or your may choose to assign sections for homework or as a classroom study guide to help students review the unit. For Unit One, Section B, the **TRUE** statements are numbers 3 and 7.

STUDENT UNIT ONE REVIEW

A. Use each of the following terms in a sentence which shows you know its meaning:

- common welfare
- civic virtue
- natural rights
- social contract
- rule of law

B. Identify each true statement and correct each of the false statements.

1. Classical Republicans placed greater emphasis on individual rights than they did on the common welfare.
2. The Reformation is important to the study of rights because it was a period which emphasized the rights of groups.
3. Natural rights philosophers believed that the primary purpose of government is to protect the basic rights of individuals.
4. The Founders believed that the best way to protect rights is to create a strong government of unlimited power.
5. Most American political thinkers in the eighteenth century believed that all white people should be able to vote.
6. The Founders believed that a constitutional government should have unlimited power.
7. Americans fought a revolution to secure traditional rights, not to demand new ones.

C. Write a short essay to answer two of the following questions:

1. How were the Founders' views about rights and government influenced by the ideas of the classical republican and natural rights philosophers?
2. In what ways are the English Bill of Rights and the American Bill of Rights similar? In what ways are they different?
3. How did the contrasts between eighteenth-century American and British society influence the Founders' beliefs about rights and government?
4. What important ideas about both rights and responsibilities are expressed in the state declarations of rights?

D. What do you think? Express and justify your opinion about one of the following questions:

1. From what you have learned about how rights have been violated throughout history, what responsibilities do you think *you* have to protect your rights?
2. In your opinion, is our nation today based on the "consent of the governed"?

© Center for Civic Education
Limited reproduction rights granted for school use only.
With Liberty and Justice for All

Unit Two

How Was the Bill of Rights Created?

Unit Overview

This unit looks the ideas and events that shaped the passage of the Bill of Rights. It examines the rights that were protected under the Articles of Confederation and the Constitution of 1787. Students are given the background to understand why the Framers did not think it necessary to include a bill of rights in the Constitution. The unit examines the struggle for ratification of the proposed Constitution and allows students to compare the positions of the Federalists and Anti-Federalists. They will learn that the lack of a bill of rights was an important weapon in the arsenal of the Anti-Federalists. Finally, they will learn of the difficulties Madison faced in pushing the Bill of Rights through the first Congress. Students should understand that at the time of its passage, the Bill of Rights had only limited importance and application for most Americans.

Unit Objectives

At the conclusion of this unit, students should be able to

1. explain how the Constitution was designed to limit the powers of the national government and protect the rights of the people
2. explain why the Framers believed a separate bill of rights was unnecessary
3. describe the protections of individual rights contained in the Constitution, their importance, and the reasons for their inclusion
4. describe the major differences between the Federalists and the Anti-Federalists over the inclusion of a bill of rights in the Constitution and how these differences were resolved
5. explain why the Bill of Rights had such a limited application at the time of its passage
6. take, defend, and evaluate positions on the arguments of the Federalists and Anti-Federalists over a bill of rights
7. take, defend, and evaluate positions on the addition of specific amendments protecting individual rights to the Constitution

Unit Introduction

Have students read the **Purpose of Unit** section with you. Highlight the unit themes. You may wish to have a student write them on the chalkboard for reference during lesson discussions. They are as follows:

- The Founders believed that the purpose of government was to protect individual rights to life, liberty, and property.

- They believed the best way to accomplish this goal was to create a government of limited powers—enough powers to safeguard rights, but not enough to violate them.
- The Constitution specified certain powers of the federal government, separated these powers, and checked and balanced them in order to safeguard individual rights.
- A primary issue of debate over ratification of the new Constitution centered around whether to include a bill of rights.

Have students examine the unit **Timeline**. Unit docents may wish to research additional events of significance concerning the creation of our Bill of Rights, such as the date of each state's ratification. Have students write the name and date of each significant event on a 3 x 5 card, with one or two additional sentences explaining why the event was important. They can then place the cards around the walls of the classroom or on a bulletin board for reference.

Lesson 9

How Were Rights Protected Under Our National Constitutions?

Lesson Overview

In this lesson students will learn how the Articles of Confederation and the Constitution were meant to protect the rights of the people. They will see how the Founders' fears of a strong national government led to the creation of a weak central authority under the Articles.

The problems that arose under the Articles led to the Philadelphia Convention and the creation of our present Constitution. Students will be introduced to the main principles of the Constitution: federalism, separation of powers, and checks and balances. These ideas were used to organize a government that would have limited powers and would protect the rights of the people. The Framers believed that a separate listing of rights was unnecessary because the federal government did not have the power to violate individual rights.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. describe the strengths and weaknesses of the protection of individual rights under the Articles of Confederation
2. explain how the Constitution was designed to limit the powers of the federal government and protect the rights of the people
3. explain why neither the Articles of Confederation nor the Constitution of 1787 contained a bill of rights
4. take, defend, and evaluate positions on the Framers' claim that rights were adequately protected by the Constitution as originally written

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Next, explain to the class that after declaring independence in 1776, the Continental Congress appointed a committee to draft a constitution for the first national government. Take a few moments to allow students to brainstorm. Upon what fundamental principles should such a constitution be based? How much power should be given to the national government? Have students jot down their ideas to refer to again during lesson discussions.

B. Reading and Discussion

You may wish to begin by asking students to restate what the Founders had learned from past history and their own experiences about the need to protect the rights of the people from government. Many of the Founders believed that individual rights were already sufficiently protected by provisions in state declarations and state constitutions. Therefore, no bill of rights was included in the Articles of Confederation, nor later in the Constitution of 1787. However, as students will see in this lesson, legislative majorities in most states had so much power that the safeguards in the state declarations were not enough to protect the rights of individuals and minorities.

Proceed to note the major achievements of the Articles of Confederation and then discuss its weaknesses in the next two narrative sections.

C. Reading and Discussion

Have students proceed to read and discuss the next three narrative sections, beginning with "What were the major concerns of the Framers?" Ask questions to elicit statements of the following key points: (a) government is designed to protect individual rights and promote the common welfare, (b) government power must be limited to prevent the violation of individual rights, and (c) the Framers believed that the system of federalism, separation of powers, and checks and balances would make it impossible for any one person or group to dominate the government and consequently violate individual rights.

In discussing point (c), ask students to reiterate the reasons the Framers believed it was necessary to limit government power. Once again, have them briefly review the influences of classical republicanism and the natural rights philosophy, as well as the Founders' experiences under the British and Confederation governments.

Note: Depending on your students' prior knowledge, you may wish to review federalism, separation of powers, and checks and balances in greater detail. To do so, see *We the People...*, Unit Three.

D. Critical Thinking Exercise: Evaluating Positions on a Constitutional Issue

If your students have conducted interviews as part of this exercise, ask them to share the results. If they have not conducted a survey, have them simply talk about their opinions of the statement. They should discuss ways in which rights can be threatened by all levels of government. They should also consider whether the methods the Framers used to limit the power of the federal government are adequate to protect individual rights.

Have students explain how each of the methods incorporated in our constitutional system would (a) limit government and (b) facilitate the protection of individual rights. Ask them to give examples from history or their own experience to support their views.

During discussion, ask students to consider Madison's argument about diversity. You may wish to share Madison's statement with the class:

> In a free government...the degree of security [for rights]...will depend on the number of interests and sects;...The society will be broken into so many parts, interests, and classes of citizens, that the rights of the individual or the minority will be in little danger from interested combinations of the majority.

Encourage students to note the difference between this and the classical republican view that diversity would harm a republic. Madison argues, in fact, that diversity will be an advantage. Ask students whether they agree with Madison on this point and why. What examples from American history support or undermine Madison's point of view?

E. Concluding the Lesson

To conclude the lesson, have students read the closing narrative selection. Ask them to think why the subject of a bill of rights received so little attention at the Philadelphia Convention. Finally, discuss the questions provided in **Using the Lesson** or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Dear James Madison.** Have students write a letter to James Madison in their program journals, addressing the quotation that follows. In the letter, they should (a) paraphrase Madison's views on human nature and government, (b) explain how such views are reflected in the Constitution he helped to frame, and (c) state whether or not they agree with him and why.

   > *What is government itself but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on men would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is, no doubt, the primary control on government; but experience has taught mankind the necessity of auxiliary precautions.*

2. **Considering Additional Articles.** Have students write a mock book jacket summary of a historical novel which describes what U.S. history might have been like if one of the following suggested articles had ended up in the final version of the Articles of Confederation:

   - that persons be appointed to prevent injustice in trade with [Native Americans.]
   - that the said States unite themselves so as never to be Divided by any act whatsoever of the legislatures of any State or States or of the Inhabitants thereof.

3. **Point/Counterpoint.** Have two students prepare and present an oral editorial in favor of or opposed to Madison's views about a diverse republican society serving to protect individual rights. Students might wish to audio or videotape the presentation for viewing by other students.

Lesson 10

What Rights Were Included in the New Constitution?

Lesson Overview

This lesson will help students understand the rights that the Framers included in the Constitution of 1787. These provisions were designed to protect individuals from the abuses of rights that had occurred both under the British government and under the various state legislatures prior to 1787. After a brief general review of the constitutional provisions protecting rights, students will take part in a critical thinking exercise which allows them to examine four particular clauses: the provisions against bills of attainder, *ex post facto* laws, and religious tests for federal office, as well as the clause defining treason. Students will be able to understand the historical background of these key protections, their importance to the Framers, and their relevance today.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. describe the rights the Framers included in the Constitution
2. explain the importance of these rights to the Framers and why they might have included them
3. take, defend, and evaluate positions on what other protections of rights, if any, they (students) would have included in the Constitution

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Then take a few moments to have students suggest three or four rights they would consider so important that they would place them in the body of the Constitution, assuming there was no separate bill of rights. What type of rights would they be most concerned with protecting and why? Have students jot down their ideas in their program journals for later reference.

B. Reading and Discussion

Have students read the first narrative section and compare the types of rights they listed in their journals with those the Framers included.

Note the three types of rights the Framers included:

- protections of the political independence and other rights of public officials
- protections of individual rights from violation by state governments
- protections of individual rights from violation by the federal government

Do the rights your students listed in their journals fall into these three categories? Ask students to explain whose rights were protected in each category, and why the Framers thought it was important to protect each of the rights mentioned. Guide the discussion by asking appropriate questions. For example:

- What historical experiences might have led the Framers to want to protect this right?
- Why is such a right important to the functioning of a constitutional democracy?

Proceed in a similar fashion to discuss each of the rights mentioned in this section of the narrative, except those which will be discussed in detail in the following critical thinking exercise. You may wish students to locate the appropriate clauses in the Constitution in the **Appendix** of the student books.

C. Critical Thinking Exercise: Examining the Importance of Rights Guaranteed in the Constitution

Follow the group procedure outlined in the student book to complete this activity. Or you may wish each group to consider all four rights. To do so, create groups of four. Each student would then be assigned the responsibility for one of the rights.

Recorders should take notes of the group discussion and various individual opinions. Spokespersons should present the opinions taken by members of the group. Individuals should be ready to justify their particular point of view. In discussing the opinions of your students and their justifications for them, you may wish to ask:

- Why might Jefferson, so often a passionate defender of individual freedom and free speech, have introduced the bill of attainder? What important interests and values were at stake?
- How would you paraphrase James Iredell's pamphlet? In what ways were his opinions similar to Hamilton's?
- Given the fact that a revolution had just been fought, might the Framers have been justified in establishing looser standards for accusing and prosecuting people for treason, in order to make sure that the new nation was secure from counterrevolution? (Note that this has often been an argument for limiting free expression and eliminating political opposition in other revolutions.) Why or why not?
- In what way does the ban on religious tests for office correlate to Madison's views about diversity? What nations today prohibit persons from serving in certain government positions if they are not of a particular religious faith? (Iran and Saudi Arabia, for example, as well as the British monarchy)

After each group has had the chance to present its views, contrast and compare the four rights in terms of how they limit government power and relate to the principle of separation of powers and checks and balances.

D. Concluding the Lesson

Have students read the last narrative section. Ask them to summarize the main points of the lesson in their own words. Then hold a closing discussion to relate the reading and the analysis students completed in the **Critical Thinking Exercise**. To do so, you may wish to ask some of the questions posed in **Using the Lesson.** Alternately, assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Hers and His Stories**. Have individual students select one of the four historical personages highlighted in this lesson. Have the student write a series of journal entries from the point of view of that person, concerning his or her beliefs about rights and limiting government power. What personal experiences might have led these individuals to develop their points of view? Are they satisfied that the Constitution will secure the rights they have been denied? Or do they favor a bill of rights as well? Why or why not? Students should share their journal entries at the Learning Center. You may wish to ask your school librarian to provide additional information about these four Founders.
2. **Slavery Broadside**. Have students create a broadside or poster to protest the constitutional protections of slavery. The broadside should aim at convincing others that, in this instance, safeguarding liberty is more important than protecting property. Students might wish to argue from the point of view of a higher natural law. You may wish to share with them this argument from a pamphlet circulated during the constitutional ratification debates by a former Harvard classmate of John Adams:

   > *There is a great distinction in not taking part in the most barbarous violation of the sacred laws of God and humanity and our becoming guarantees for its exercise for a term of years...It is our purpose to wash our hands clean of it.*

Planning Ahead

In the next lesson, students will take a look at the struggle between Federalists and Anti-Federalists. The lesson is not intended to look at the ratification debate in detail, but rather to highlight those arguments pertaining to the subsequent creation of the Bill of Rights. If you wish to provide your students with additional background on the positions of the Federalists and Anti-Federalists during the ratification debates, refer to the *We the People...* teacher's guide, pages 111-118.

You also may wish to invite outside guests to class to judge the debate or chair the simulation in which your students will be participating. (See the **Critical Thinking Exercise** in Lesson 11.) Suggested guests might be a historian, legislator, attorney, or judge. (See **Visiting Professionals** in the introduction to this teacher's guide for further information about working with classroom visitors.)

Lesson 11

Why Was the Bill of Rights Added to the Constitution?

Lesson Overview

This lesson surveys the struggle over ratification of the Constitution and presents the positions of the Federalists and Anti-Federalists. The lesson focuses on the differing positions regarding the need for a bill of rights in the proposed Constitution. Students complete a critical thinking exercise in which they examine the positions of the Federalists, who opposed adding a bill of rights, and the Anti-Federalists, who insisted one was necessary. Popular opinion supported the Anti-Federalists' position and convinced the Federalists to agree to add a bill of rights once the Constitution was ratified.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain and evaluate the major differences between the Federalists and Anti-Federalists over the addition of a bill of rights to the Constitution
2. explain why the Federalists agreed to add a bill of rights

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Next, have students read the introductory narrative, "What happened after the Philadelphia Convention?" Take a few minutes to have them brainstorm their answers to the questions posed.

B. Reading and Discussion

Have students read the next narrative section about why the ratification process was designed the way it was. Emphasize it was feared that the creation of a strong federal government would cause the state governments to lose some of their autonomy or sovereignty. This point is important for two reasons: (1) because of its impact on the ratification process and (2) because one reason for proposing a bill of rights was to ensure state sovereignty as well as to protect individual rights.

The Framers' plan called for states to elect delegates to a special state ratifying conventions. Refer students to Article VII which describes this plan. (See **Appendix**) Ask students to explain why it might not have been in the personal interests of state legislators to approve the Constitution. Why did the Framers fear a ratification plan in which state legislators would cast the deciding votes?

Have students read about the struggle for ratification. Mention is made in the text that the ratification battle was often bitter. You may wish to explain to students that members on both sides frequently attempted to discredit opponents, misrepresent their positions on issues, and use parliamentary procedures to gain the political advantage.

To complete discussion of this narrative section, explain that there were many issues of debate concerning ratification of the Constitution. Because of the focus of this program, Lesson 11 highlights only one area of the debate, that concerning a bill of rights.

C. Critical Thinking Exercise: Taking, Defending and Evaluating Positions on the Need for a Bill of Rights

Have students work in an even number of groups to analyze the key arguments for and against a federal bill of rights. To do so, students should paraphrase each point and identify historical data or philosophical arguments to support or undermine each proposition. A recorder should make a list of these arguments for later reference.

Afterwards, assign each group the role of Federalists or Anti-Federalists. It is best to make these assignments after students have analyzed the positions in order to encourage them to discuss the arguments on both sides of the proposition. Students should then work to prepare their best arguments in support of or opposed to a federal bill of rights. Encourage them to anticipate the probable arguments their opponents will make.

Proceed to hold a class debate or simulation. If you wish to use the debate format, have each side select spokespersons to present a five-minute oral argument in favor of the group's position. After each side has presented its initial arguments, other students should make two-minute rebuttals. You may wish to invite outside guests to judge the debate.

Alternately, you may wish students to simulate a discussion concerning a bill of rights during a state ratification convention. To do so, follow modified parliamentary procedure. You may wish to chair the discussion or invite an outside guest to do so. Consider the question and ask delegates to speak in favor or against the need for a bill of rights.

To debrief the activity, have students express and justify their own personal views:

- In your opinion, which is the strongest argument for and against a federal bill of rights? Why?
- Would you have supported the Constitution as originally written, without a bill of rights?
- Would you have supported the Constitution if one or more of the following conditions were met?

  (a) it had a bill of rights

  (b) a promise was made that a bill of rights would subsequently be added to it

  (c) certain rights were more specifically delineated in the body of the Constitution

  (d) other
- Would you have opposed the Constitution under any conditions? If so, why?

D. Concluding the Lesson

Have students complete the brief narrative sections at the end of the lesson. Ask the class why the concept of a bill of rights became the focal point of the ratification battle. Do they think that this focus was the best strategy for the Anti-Federalists? Do they think the Federalists should have given in to the demand for a bill of rights?

To augment the discussion, you may wish to have students express their views about the following statements made by those actively involved in the ratification battle:

- *If the system is adopted, it will amount to the total and unconditional surrender to that government by the citizens of this state, every right and privilege secured to them by our state constitution.*
  Luther Martin
- *I am convinced such a government as the Constitution will establish....a government acting directly on the people of the states is necessary for the common defense and the general welfare.*
  Ebenezer Webster
- *There are certain unalienable and fundamental rights which in forming the social compact, ought to be fixed—that a free and enlightened people, in forming this compact, will not resign all their rights to those who govern and they will fix limits on their legislators and rulers. These rights should be the basis of every constitution.*
  Richard Henry Lee
- *If we do not ratify, the Union will be dissolved, the dogs of war will break loose and anarchy and discord will complete the ruin of this country.*
  Edward Randolph
- *At present we have our liberties in our own hands. Let us not relinquish them. Let us not adopt this system til we see them secured.*
  Patrick Henry
- *I have for some time been persuaded that the question in which the proposed constitution must turn is a simple one—whether the Union shall or shall not be continued. There is, in my opinion, no middle ground.*
  James Madison
- *Truly sir, I will agree that a bill of rights may be a dangerous instrument, but it is to...the aspiring ruler, not to the liberties of the citizen.*
  Robert Whitehill
- *A few years ago, we fought for liberty. We framed a general government of free principles. We placed the state legislatures in whom the people have a full and fair representation between Congress and the people. We were then too cautious and too restricted the powers of the general government. But now it is proposed to go to the contrary—to remove all barriers, to give the new government free access to our pockets and ample command of our persons, and all that without providing for a genuine representation of the people and protections [for their rights.]*
  Melancton Smith

Do any of these arguments convince your students to change their minds about ratification? If they had lived in 1787, would they have agreed with the Federalists or Anti-Federalists? Why?

Finally, have students discuss their answers to the **Using the Lesson** questions. Alternately, these can be assigned as written homework.

Optional Reinforcement and Enrichment Activities

1. **Dear Abby**. Have students write a letter to Abigail Adams in which they comment on her statement: "Excluded from honours and office, we cannot attach ourselves to the State of Government....Even in the freest country, our property is subject to the control and disposal of our partners....Deprived of a voice in legislation, obliged to submit to laws imposed on us, is it not sufficient to make us indifferent to the Publick Welfare." Students should explain why they think women should or should not have been given full political and property rights under the proposed Constitution

2. **Ratification Talk Show**. Have students stage a talk show about the ratification debate. Students should play the parts of leading Federalists, such as Alexander Hamilton, James Madison, and John Jay, and Anti-Federalists, such as Mercy Otis Warren, Patrick Henry, and George Mason. Samuel and Betsy Adams, Anti-Federalists who in the end lent their support for ratification upon promise of a bill of rights, should host the show. They should pose questions to raise the key arguments on both sides of the ratification issue, particularly those concerning the safeguarding of individual rights. The show can be taped for viewing by other students.

Lesson 12

How Was the Bill of Rights Added to the Constitution?

Lesson Overview

This lesson looks at efforts to get the Bill of Rights added to the Constitution. Students will see the difficult task James Madison faced in getting congressional support for a bill of rights. It was an uphill struggle against the indifference and outright opposition of many members of Congress. In the end, Congress accepted most of Madison's proposed amendments, although it rejected what he considered the "most valuable amendment in the whole list," the one that prohibited states from violating the rights of conscience, free press, or trial by jury in criminal cases. Students will note the limited application of the Bill of Rights at the time of its passage. This lesson will introduce the rest of the text, which examines the extension and development of the Bill of Rights during the nineteenth and twentieth centuries.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. describe Madison's role in the addition of the Bill of Rights to the Constitution
2. explain the functions of the amendments Madison proposed as well as those he rejected and the basis for his decisions
3. explain why the Bill of Rights had such a limited effect at the time of its passage
4. take, defend, and evaluate positions on proposed amendments designed to protect individual rights

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Reading and Discussion

Ask students to read the introductory narrative section about the first inauguration. You might add that instead of carrying a scepter, Washington wore the sword he had used to win the Revolution. What can students tell about the image Americans had of themselves and the principles upon which their government was based from this description of the first inauguration?

They might note principles of egalitarianism, economic as well as political independence, self-reliance, and most important, the ideas of the social contract, consent of the governed, rule of law, and limited representative government.

Proceed to read the next narrative sections. Note that Madison was committed to adding a bill of rights to the Constitution because of the following reasons:

(a) He was convinced that a second constitutional convention was dangerous because it would most likely result in placing too many limits on the powers of the federal government.

(b) Madison believed he should live up to the commitment he had made that he would see that a bill of rights was added.

Madison was in a particularly difficult position because he had to convince his fellow Federalists that he was not a traitor to the cause of a more powerful federal government while fulfilling his pledge to the Anti-Federalists to add a bill of rights.

Emphasize the two categories into which most of the suggested constitutional amendments fell: (1) limitations on federal government power or (2) protections of individual rights. Have students look back at the list of suggestions they made at the end of the last unit. Do their suggestions fall into these two categories? As you proceed to read about the amendments Madison proposed, have students compare them with those they suggested.

During discussion, ask appropriate questions, such as the following, to emphasize the key points:

- Why did Madison ignore amendments which would place further limits on the power of the federal government?
- What would an introductory statement concerning natural rights accomplish? How would it have been similar to statements contained in the state declarations?
- Why were some Americans alarmed that the rights of individuals and minorities were being violated by the states? How was this possible given state declarations of rights?
- On the basis of Madison's proposals, what can you tell about his views about the nature of government and individual rights? What ideas from classical republican thought and natural rights philosophy are apparent?
- What historical experiences can you cite to justify or negate Madison's view that the greatest threat to individual and minority rights would most likely come from the states, not the federal government?
- What rights might be protected by the Ninth Amendment?
- Why do you think that Madison wanted rights included in the body of the Constitution, rather than attached separately? Would you have supported this view? Why or why not?

Note that Madison concurred with Jefferson about placing rights directly in the body of the Constitution, in part because it would specifically make clear that the federal courts, being created by the first Congress, would have the duty to see that these rights were protected. In Madison's words, the courts would be

the guardians of those rights...an impenetrable bulwark against the assumption of power in the legislative and executive branches; they will...resist every encroachment upon rights stipulated in the Constitution.

Opponents of this position argued that to add language to the Constitution itself would imply that a new constitution was created, one which had not been ratified by the people. It also might set a dangerous precedent, opening the door to other structural changes which many Anti-Federalists wished to make, but which the Federalists opposed.

C. Critical Thinking Exercise: Taking and Defending Positions on a Constitutional Amendment

Have students work in small groups to analyze the amendment Madison believed was the most valuable. After each group of congressional representatives has discussed the proposal, have a spokesperson make a majority and minority report to Congress. Afterwards, hold a vote. Does the proposed amendment pass?

In debriefing this activity, have students summarize the arguments on both sides. Emphasize that (a) Madison thought the states posed the greatest threat to individual liberty and (b) that the rights included in this amendment had been abused by the British government and were considered fundamental to a free people.

In each case, students should justify their points of view. They should then proceed to analyze the specific amendment Madison proposed. To facilitate discussion, you may wish students to consider the following:

- Why might Madison have wished to specifically protect these particular rights?
- What important interests such as state sovereignty should be considered when deciding whether or not to support this amendment?
- What fundamental values, such as individual liberty, should be considered when deciding whether or not to support this amendment?

D. Reading and Discussion

Have students read the next narrative section and compare their views with those of the first Congress. Note that the Anti-Federalists had not abandoned their commitment to protect individual rights and limit the power of the federal government. They thought, however, that Madison's proposals did not achieve this goal.

Refer back to the statement made earlier in the lesson that the amendments suggested by the states fell into two categories. Ask students which category Madison eliminated. It was those amendments which would have limited the power of the federal government—a point very important to the Anti-Federalists.

Note also that Madison had written the prohibitions concerning individuals rights very narrowly. Many Anti-Federalists wanted broader, more open-ended prohibitions. Although they lost this battle, Anti-Federalist senators did manage to defeat the amendment which would have placed prohibitions on the states as well as on the federal government. Emphasize that by doing so, the Anti-Federalists managed to make the Bill of Rights reflect their view that greater limits were needed on the power of the federal government than on the power of state governments.

Before proceeding to the next critical thinking exercise, you may wish to note the second of the two amendments *not* ratified. It would have prohibited Congress from voting in a pay raise effective during

that term. Would your students have voted to include this amendment in the Bill of Rights? Why or why not? They might be interested to know that two hundred years later, Congress passed a congressional pay raise law similar to this amendment.

E. Critical Thinking Exercise: Taking and Defending Positions on Constitutional Amendments

In completing this exercise, have students examine the Bill of Rights. Ask them to select the amendment they wish to apply to the states. Students should be prepared to justify their selection both on philosophical and historical grounds. They should work as a group to develop arguments in favor of the right they have selected.

After group spokespersons have presented their recommendations, classmates should discuss which rights they most wish to protect from violation by all levels of government. In debriefing the activity, have students

- compare the rights they have selected with the list they made upon completion of the last unit. How has their thinking evolved in the course of this program?
- project what might happen if these rights were not protected from government. Does their state constitution prohibit their state government from violating these rights?
- consider other rights, not specifically listed in the original Bill of Rights, which they would like to see protected from violation by government. Are these rights protected today by later constitutional amendments? Acts of Congress? Other legislation, executive orders, or court decisions?

Note that in the next units, students will learn more about which rights both state and federal governments are prohibited from violating. They may wish to save their notes from this exercise for discussion at a later point.

F. Reading and Discussion

Have students read about popular reaction to the Bill of Rights in 1791. It will most likely come as a surprise that the Bill of Rights had such a lukewarm reception, given the historical and international importance of this document today. Ask students to review the main reasons for this reaction on the part of Americans who had waged a revolution to safeguard their rights. In doing so, you may wish to ask:

- Why might Senator Grayson have thought that the Bill of Rights would "do more harm than good"?
- Why might Secretary of State Jefferson have responded as he did, given that he once wrote: "A bill of rights is what the people are entitled to against every government on earth, general or particular, and what no government should rest on inferences?"
- In your opinion, were women and African Americans better off without the federal Bill of Rights? Explain your position.

G. Critical Thinking Exercise: Taking and Defending a Position on a Constitutional Amendment

Have students work individually to write their answers to the questions posed in this exercise on the Second Amendment. You may wish to have a class discussion based on these questions as well as on current state and federal proposals concerning this constitutional right. Unit docents should present relevant clippings on these issues to update the class. Alternately, you may wish to conduct the exercise as a simulated hearing, such as the one suggested in the **Optional Reinforcement and Enrichment Activities** below.

During discussion you may wish to ask:

- What do you think Aristotle meant when he said that "the sword and sovereignty ever walk hand in hand together?" How is this statement reflected in the Founders' reasoning for protecting the right of citizens to bear arms?
- Do you agree with John Locke and Jean Jacques Rousseau who argued that it is the civic duty of all citizens to be armed to protect their families, communities, and nation? If so, what should be done if a person's individual beliefs or conscience prevent him or her from fulfilling this duty?
- Samuel Adams insisted that the Constitution "never be construed...to prevent the people of the United States who are peaceable citizens from keeping their own arms." Do you think the Constitution has been interpreted on this point in a way Adams would have approved?
- In the eighteenth century the Second Amendment was considered an individual right, like the First Amendment. Do you agree with those who believe that it should be interpreted instead as a state right to have a militia and national guard? Explain.
- Laws limiting the possession of firearms by minors, felons, and the mentally-impaired have always been considered constitutional. What other limits on this right, if any, would you consider constitutional and why?

H. Concluding the Lesson

Have students read the final narrative section. To stimulate discussion, ask questions such as those below, in addition to those posed in **Using the Lesson**. Alternately, you may wish to assign these as written homework.

- What examples can you cite to illustrate the fact that, at times, individuals and interest groups threaten individual rights? How prevalent do you think such threats are in our society today?
- In your opinion, does personal prejudice and selfishness pose a greater threat to individual rights than does government? What does your answer imply about the need for civic virtue? Moral education?
- In what areas do you think the greatest gains have been made since 1791 in terms of the extension of rights to those excluded in the past? What, if any, improvement is still necessary to achieve "liberty and justice for all"?

Finally, have students volunteer what they consider to be the most important things they have learned about their rights and responsibilities in Unit Two.

Optional Reinforcement and Enrichment Activities

1. **Congressional Newsletter**. Have students imagine that, as members of the first Congress, they are writing a newsletter to mail to their constituents. The newsletter should report the accomplishments of the first Congress in terms of drafting a bill of rights. Each congressman should include his opinions about a bill of rights in general, Madison's proposals, and the final document. He should also include his projections about the impact the Bill of Rights will have on citizens in his district should it be ratified.

2. **Rights Poetry Reading**. Have students write poems concerning the lack of full political rights for women and minorities even after ratification of the Bill of Rights in 1791. They should then stage an eighteenth century poetry reading, hosted by teenager Elizabeth Drinker who wrote:

   The Glorious Fourth again appears
   A Day of Days—and years and years
   The sum of sad disasters,
   Where all the mighty gains we see,
   With all our boasted Liberty,
   Is only a Change of Masters.

Class poems should be collected and published within the school community or the poetry reading taped for the Learning Center.

3. **Legislative Gun Hearing**. Have students simulate a congressional or state legislative hearing on a proposed bill which would place further limits on the right to bear arms. Base the hearing on current federal or state legislation, such as that to establish waiting periods or proposed bans on military assault weapons. Students should play the roles of individual citizens who support further gun control, gun owners, sportsmen, and others opposed to further or current limits. Other students should play the parts of lobbyists for various groups organized to oppose and promote gun control and legislators conducting the hearing. After the simulated hearing, students should express their own personal views on the topic.

Student Unit Review

You may wish to reproduce the following **Student Unit Review** for your students. The entire reveiw may be used as a unit test, or you may choose to assign sections for homework or as a classroom study guide to help students review the unit. For Unit Two, Section B, the **TRUE** statements are numbers 4, 6, and 7.

STUDENT UNIT TWO REVIEW

A. Use each of the following terms in a sentence to show you know its meaning:

- federalism
- separation of powers
- checks and balances
- legislative supremacy
- enumeration

B. Identify each true statement and correct each false statement.

1. The Articles of Confederation were primarily criticized because they gave the national government too much power.
2. The Constitution did not include a bill of rights because the Founders believed that individual rights were already sufficiently protected by state constitutions.
3. The Framers believed that state constitutions adequately separated and checked the power of each branch of the state governments.
4. Most Framers believed that federalism, the separation of powers, and checks and balances, when combined with the size and diversity of the United States, were adequate to protect natural rights.
5. Until ratification of the Bill of Rights, the Constitution provided no protection for individual rights.
6. Madison believed that state governments were a greater threat to the rights of minorities than the federal government.
7. Both the Federalists and the Anti-Federalists thought it was important to protect individual rights.

C. Write a short essay to answer two of the following questions:

1. What do you think were the most important historical and philosophical influences on the way the Framers organized the government under the Constitution?
2. List and analyze the key arguments for or against a federal bill of rights.
3. Evaluate the statement that the Framers valued the right of property more than the right of liberty.
4. In what ways were the rights included directly in the body of the Constitution similar to or different from those included in the Bill of Rights?

D. What do you think? Express and justify your opinion about one of the following questions:

1. In your opinion, were the Federalists or Anti-Federalists correct about how much power the federal government should have over state governments and the lives of individuals?
2. In your opinion, what is the greatest threat to individual liberty in our society today and what can be done to reduce or eliminate that threat?

© Center for Civic Education
Limited reproduction rights granted for school use only.
With Liberty and Justice for All

Unit Three

How Were the Protections of the Bill of Rights Expanded?

Unit Overview

Unit Three examines the expansion of the Bill of Rights from the time of its passage through the 1960s. Students will learn that in the period before the Civil War, the Bill of Rights had very little effect on the lives of most Americans. Students will briefly survey the Civil War and Reconstruction periods, examining the historical background of the Civil War Amendments. Particular attention will be given to the Fourteenth Amendment. Students will learn of the importance of the equal protection clause and the issues raised in its implementation, including the controversy over affirmative action. They will also consider the due process clause of the Fourteenth Amendment and learn how the government has protected substantive due process. Finally, students will examine the process of incorporation by which the protections of the Bill of Rights have been included in the Fourteenth Amendment.

Unit Objectives

At the conclusion of this unit, students should be able to

1. explain why the Bill of Rights provided such limited protection of individual rights before the Civil War
2. explain some of the strengths and weaknesses of state protections of individual rights
3. explain the purposes of the Civil War Amendments and the civil rights legislation passed after the Civil War
4. explain why these amendments and laws eventually failed to serve their purposes
5. explain how and why the application of the equal protection clause has changed from its adoption to the present time
6. explain the tension between the ideas of equality of condition and the equal protection of the laws
7. explain the purposes of affirmative action programs and the issues raised by these programs
8. define substantive due process and explain how it has been interpreted and applied to protect rights
9. explain what is meant by incorporation and describe the arguments over the incorporation of the Bill of Rights
10. explain the function and importance of the Fourteenth Amendment
11. take, defend, and evaluate positions on issues regarding the right to equal protection of the laws

Unit Introduction

Have students turn to Unit Three and read the **Purpose of Unit** section. Note the key themes which you may wish a student to write on the chalkboard for reference:

- The Bill of Rights is more important today as a document which protects our rights than it was in the eighteenth and nineteenth centuries.
- During the past two hundred years, the Bill of Rights has been interpreted to apply to more people than when it was originally drafted.
- The equal protection and due process clauses of the Fourteenth Amendment, as interpreted by the Supreme Court, have extended the protections of the Bill of Rights.
- The struggle continues to extend protections of the Bill of Rights to all Americans.

Next have students examine the unit **Timeline**. You also may wish unit docents to begin work on a Equality Timeline, highlighting key events in the struggle to achieve equality for all Americans. Have students create a timeline around the walls of your classroom, writing a few sentences on 3 x 5 cards to describe the significance events, cases, or acts they may identify.

Planning Ahead

During this unit and following units, students will be asked to express their own views about controversial constitutional issues as well as the views of particular schools of constitutional interpretation. Students should be encouraged to justify their opinions in a reasoned manner and to listen respectfully to the opinions of others. Emphasize that the purpose of these discussions is to explore topics and issues which lie at the heart of a free society.

It is hoped that through such exploration and discussion, your students will be better able to develop their own opinions about critical issues. These opinions will have an impact on which positions, laws, and constitutional interpretations they will support and what decisions they will someday make as a member of a jury, taxpayer, voter, and possibly, candidate for public official. Stress that their civic participation, or lack of it, will have a significant effect on how our rights are interpreted and applied in the future. As Jefferson once noted, "The world always belongs to the living generation."

Note: Students who have been collecting clippings on various constitutional issues should be prepared to present current concerns to the class as each section of the Bill of Rights is discussed.

Lesson 13

How Well Did the Bill of Rights Protect Individual Rights Before the Civil War?

Lesson Overview

This lesson begins by stressing that the Bill of Rights had little effect on most citizens before the Civil War. The Bill of Rights, as originally written and as interpreted by the Supreme Court in the landmark case of *Barron v. Baltimore*, was intended to protect people from actions of the federal government. It did not place any limits on the powers of the state or local governments or on the actions of private people or groups.

Students will examine how the states protected the rights of their citizens and how, in some instances, these rights were violated by the state governments. Students will also see the limitations of the Bill of Rights in protecting individuals from abuses of power by the federal government, such as in the Sedition Act of 1798. This lesson covers the period from the ratification of the Bill of Rights in 1791 through the Civil War.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain why the Bill of Rights provided such limited protection of individual rights before the Civil War
2. describe the importance of the Sedition Act of 1798
3. explain the importance of *Marbury v. Madison* and *Barron v. Baltimore*
4. describe the limited protection of individual rights under the state governments
5. take, defend, and evaluate positions on alternative means of protecting individual rights

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Reading and Discussion

Have students read the text up to the first critical thinking exercise. You may wish to use the following questions to review the material covered in the first part of the lesson:

- Before the Civil War, what recourse did citizens have if their rights were violated by their state or local governments?
- Why were state protections of individual and minority rights often inadequate?
- In your opinion, did the Sedition Act violate the Constitution? Why or why not?
- Where is the principle of judicial review mentioned in the Constitution? In your opinion, how would you rate its importance in protecting rights? Why?
- Explain the importance of *Marbury v. Madison* and *Barron v. Baltimore* to the study of rights in the United States.
- In deciding when to protect and limit rights, what are the most important interests and fundamental values you think should be considered? Why?

C. Critical Thinking Exercise: Analyzing Conflicting Rights

Have students take a few minutes to answer the three questions posed in this exercise, either individually or with a study partner. Students should then share their answers with the entire class. You may wish, at a later date, to have students research and simulate oral arguments in the *Dred Scott* case. Students collecting clippings on current issues relevant to the tension between personal liberty and property rights should present them to the class at this time.

D. Reading and Discussion

Have students complete the narrative sections of the lesson. You may wish to refer back to the arguments made by New Hampshire slaves petitioning for freedom in Lesson 8 of the student book. Do students agree with the abolitionists that the ideal of equality was the foundation of American government? To continue discussion of the reading, ask students if they agree with the court decision in the Massachusetts segregation case. What arguments can they make for or against the decision? Upon what interests and values are these arguments based?

Note that abolitionists supported state sovereignty and believed that slavery must be abolished at the state level rather than dictated by the federal government. The most radical of the abolitionist newspapers, *The Herald of Freedom*, stated in November 1835:

> *We hold that we have no power, either expressed or implied, to legislate on the subject of slavery in the several States. We fully...recognize the sovereignty of each State to legislate exclusively on the subject of slavery which is tolerated within its limits. We concede that Congress, under the present national compact [the Constitution] has no right to interfere with any of the slave States on this momentous subject. This is now and has always been the unanimous opinion of Abolitionists. [However] we believe and maintain that Congress has the power and right to abolish slavery in the District of Columbia over which the Constitution, by express provision, gives it "exclusive legislative [power]."*

What do your students think? Did the Constitution give the federal government the power to abolish slavery in the states? In the District of Columbia? Was the Emancipation Proclamation constitutional? Why do they think Lincoln did not free slaves in the North?

E. Critical Thinking Exercise: Taking and Defending Positions on the Protection of Rights

Have students complete this exercise. To facilitate discussion, you may wish two students to play the roles of Madison and Hand. After students have had the opportunity to think and talk about the two statements in small groups, invite "Madison" and "Hand" to come before the class. Have each talk about his views. Then have other students share and compare their opinions.

You also may wish to discuss relevant contemporary issues which raise questions about the rights and responsibilities of individual citizens. What responsibilities do students believe they have? How actively do they define their responsibilities? For example, is it sufficient to exercise one's traditional responsibilities to serve on juries, vote, or be law abiding? Does one also have the responsibility to work actively to extend rights to others—for example, in the nineteenth century, to be an abolitionist, or in our own century, to work towards amendments for equal rights, economic equity or the right to life? Do we have international responsibilities too, for example, to combat the abuse of human rights in other parts of the world? Have students discuss their views in class or write about them in their program journals.

F. Concluding the Lesson

End class by discussing in what ways one's opinions on the following concepts and issues might influence a person's decision about which side he would have supported during the Civil War: state sovereignty, equality, social contract, consent of the governed, rule of law, natural rights, common good, and civic virtue? Then have students answer the **Using the Lesson** questions. Alternately, these can be assigned as written homework.

Optional Reinforcement and Enrichment Activities

1. **Appellate Arguments.** Have students work together to stage appellate arguments in one of the cases highlighted in this lesson. Attorneys should deliver a three-to-five minute oral argument before a nine-member Supreme Court. Justices should be prepared to question the attorneys. Afterwards, members of the Court should deliberate and issue their opinions, and if necessary, their dissents. You may wish to invite an attorney or judge to class to discuss the student cases and the actual Supreme Court decisions with the class in a debriefing session.
2. **Presidential Advisor Memo.** Have students imagine that they are presidential advisors. They should draft a memo to President Lincoln about his proposed Emancipation Proclamation. What do they think of his plan to free slaves only in territory under Union control?

Planning Ahead

In the critical thinking exercise in Lesson 14, students will discuss what actions they could take to insure that legislation they support is passed. You may wish to invite a staff member from your congressional representative's or state legislator's office, or a member of a citizen lobby group, to discuss this exercise with your students.

Lesson 14

What Amendments to the Constitution Were Added to Protect the Rights of African Americans?

Lesson Overview

In this lesson students will examine the Civil War Amendments that were intended to protect the rights of the newly freed slaves. The lesson will present a brief historical overview of the Reconstruction period, explaining the necessity for adding the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution. Students will learn of the attempts by Southerners to deny African Americans their rights and how these amendments and other congressional legislation were meant to protect the former slaves. In reality, neither the amendments nor the Civil Rights Acts of 1866 and 1875 were particularly effective, and it took another century before blacks received the full rights of citizenship.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the purposes of the Civil War Amendments and the civil rights legislation passed after the Civil War
2. describe the historical reasons that necessitated passage of these amendments
3. explain why the amendments and legislation were ineffective in protecting the rights of black Americans
4. take, defend, and evaluate positions on ways to enforce legislation designed to protect individual rights
5. take, defend, and evaluate positions on means of preventing unfair discrimination and remedying its effects

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Reading and Discussion

Have students read the first section on political parties. (If they are unfamiliar with the development of political parties, you may wish to refer them to *We the People...*, Lesson 20.) Note that although we take political parties for granted today, the political party system was not established by the Constitution. Many Founders feared factionalism. They thought that political parties would promote the interests of special groups at the expense of the common welfare. Nevertheless, parties developed in Washington's first administration, centered around the different political philosophies represented by Hamilton and Jefferson.

Have students continue the narrative. To discuss the various positions concerning rights for African Americans, you may wish to call on different students to speak on behalf of people such as the following: James Buchanan, John Fremont, Abraham Lincoln, Reconstruction period Republicans, Reconstruction period Democrats, Southerner, Northern laborer, free black man, free black woman, Rutherford Hayes, and Susan B. Anthony.

Next have students explain the role of the legislative and executive branches at both the state and federal levels in terms of extending, protecting, and limiting rights. Discuss the black codes, having students explain why they were discriminatory. Note that laws such as the use of poll taxes, literacy tests, and grandfather clauses continued for a hundred years. You may wish to draw parallels between those who worked to expose racism, build schools and churches, demand equal justice, and support voting rights during Reconstruction and those who did so a century later.

You may wish to have students create a chart similar to the one below, to analyze the effectiveness of the three Civil War amendments. Students may complete the chart on the chalkboard through structured discussion or work with a partner and then share their ideas with the class.

Lesson 14 Study Chart

Amendment	Purpose	Effects
Thirteenth		
Fourteenth		
Fifteenth		

Finally, students should discuss the issue of women's rights in light of the following statements:

1. Frederick Douglass, a supporter of women's suffrage, said at the time the Fourteenth Amendment was passed that it was not appropriate to press for political rights for women because it was the "Negro's hour."
2. Sojourner Truth, free woman and political leader, wrote, "There is a great stir about the coloured men getting their rights, but not a word about coloured women getting theirs. You see, the coloured men will be masters over the women and it will be just as bad as before."

Note that the ratification battle over the Fourteenth Amendment split the women's movement. Elizabeth Cady Stanton, Sojourner Truth, and Susan B. Anthony vigorously fought against the amendment which they viewed as a betrayal of the women who had battled for abolition and fully backed the war effort. Other leaders like Lucy Stone and Elizabeth Blackwell supported the amendment, believing it to be the next step in the struggle for universal suffrage. This rift would continue well into the twentieth century.

Conclude this discussion by asking your students what arguments they would have made for or against omitting the reference to voting rights for men in the Fourteenth Amendment and granting full rights to women.

C. Critical Thinking Exercise: Examining Alternative Means of Preventing Unfair Discrimination

Have students work in small groups or in pairs to complete this exercise. If you have not invited a guest to class to discuss what citizens can do to achieve their legislative and public policy goals, students may wish to write down their ideas to send to a public representative for evaluation.

In discussing this exercise, be sure to talk about what responsibility, if any, students believe they have to promote tolerance and combat racism, sexism, and prejudice. What concrete actions could they take to do so?

D. Concluding the Lesson

To conclude the lesson, read the following statement to your students, made by African American leaders in 1865. Analyze the Civil War amendments and subsequent civil rights legislation in light of this statement, asking questions similar to those suggested below.

> *We simply ask that we shall be recognized as men...that the same laws which govern white men shall govern black men; that we have the right of trial by jury of our peers; that schools be established for the education of colored children as well as white, and that the advantages of both colors shall, in this respect, be equal; that no impediments be put in the way of our acquiring homesteads for ourselves and our people. In short, that we be dealt with as others are—in equity and justice.*

1. What goals are stated in the petition?
2. What important interests and values underlie these goals?
3. Did the Civil War Amendments address these goals?
4. Did the Civil War Amendments achieve these goals?

5. In what ways did federal and state laws in the years following the Civil War help achieve or undermine these goals?

Then have students discuss the **Using the Lesson** questions or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Comparing Declarations**. Have a group of students give an oral report to the class, comparing the style, values, interests, and goals of the Declaration of Independence with the Declaration of Women's Rights drafted and presented by Elizabeth Cady Stanton at the Seneca Falls Convention in 1848.
2. **Analyzing Party Platforms**. Have selected students analyze the most current party platforms in terms of the ideas expressed about rights. What ideas about rights and government based on classical republicanism and the natural rights philosophy are reflected in the platforms? How do party positions today on civil rights issues compare with the positions of political parties in the 1860s? Students should make a chart or bulletin board to share what they have learned with the rest of the class.
3. **Women's Rights Collage**. Have students create a collage advocating women's rights, based on the statement by Frederick Douglass: "You cannot outlaw one part of the people without endangering the rights and liberties of all of the people."
4. **African American Biography Bulletin Board**. Have selected students research African Americans who struggled for equal rights. Have them write one-page biographies, each beginning with a relevant quotation such as the following by W.E.B. Du Bois: "We claim for ourselves every single right that belongs to a freeborn American—political, civil, and social; and until we get these rights, we will never cease to protest and assail the ears of America." Use the quotations to create a bulletin board. Have the class discuss and compare the views and strategies of different African American leaders in terms of securing rights.

Planning Ahead

In the next lesson, students will be considering two landmark Supreme Court decisions, *Plessy v. Fergusson* and *Brown v. Board of Education*. You may wish to assign selected students or the whole class the task of reading about each case prior to discussion. Students should be prepared to present arguments on both sides during class and justify their own views about each Supreme Court decision.

Lesson 15

How Does the Fourteenth Amendment Promote Equal Protection of the Laws?

Lesson Overview

The Fourteenth Amendment guarantees the equal protection of the laws. This is the first time the word equality appears in the Constitution. In this lesson students will examine the concept of equality and will learn about the differences between equality of condition and equality of opportunity. They will look at the limitations of the equal protection clause at the time of its passage. In particular, they will see how the *Plessy v. Ferguson* case endorsed the principle of separate but equal rights and gave legal sanction to a system of racial segregation. When this case was overturned in the 1954 *Brown* decision, the foundation was laid for expanding the protections of the Fourteenth Amendment. Many people still argue, however, that the emphasis on equal rights rather than equality of condition has led to an unacceptable inequality in our society. Students will examine this issue which provides the foundation for the following lesson on affirmative action.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the difference between equality of condition and the right to equal protection of the laws
2. explain how the use of the equal protection clause has changed from its adoption to the present day
3. explain the importance of the *Brown v. Board of Education* case
4. explain the tension between the ideas of equality of condition and equal protection of the laws
5. take, defend, and evaluate positions on the problems of inequality of condition that are raised in the lesson

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

You then may wish to conduct an introductory brainstorming activity to help your students explore their own views about equality. Ask them to describe their vision of a society based on the ideal of equality. What would that society be like socially, politically, economically, and spiritually? In what ways would it resemble our own?

B. Reading and Discussion

Have students read the first three narrative sections. Then have them analyze and compare their visions of society discussed in the introductory activity with the concepts of equality of condition and equal protection of the laws. Be sure students understand the intent of the authors of the Fourteenth Amendment and their reasons for rejecting the idea of equality of condition. Also discuss the limited protection of individual rights this amendment provided when first adopted.

Next, read about the two Supreme Court cases with your class. If you have chosen to have students prepare oral arguments as homework, have them make their presentations at this time.

You may wish to remind students that the Fourteenth Amendment was written to apply only to acts of the government. If individuals, groups, or private organizations discriminated, citizens generally had to look to federal and state legislation for protection. However, in recent years, courts have ruled that certain organizations, such as public service clubs, can be ordered to allow, for example, women to join, as long as the basic purpose of the clubs are not destroyed (see *Roberts v. United States Jaycees*, 1984). Justices also noted in that case that "the Constitution does not guarantee a right to choose employees, customers, suppliers, or those with whom one engages in simple commercial transactions, without restraint from the State. A shopkeeper has no constitutional right [for example] to deal with persons of one sex [or race]."

C. Critical Thinking Exercise: Proposing Remedies to Problems Arising from Inequality of Condition

After students have read about the tension between equality of condition and equal protection of the laws, have them discuss the text in small groups. You may wish students to count off—one, two, three—within each group. The "ones" will be responsible for proposing remedies concerning political influence, the "twos" concerning rights of the accused, and the "threes" concerning the right to an education.

Spokespersons for each group should share their recommendations with the rest of the class. Students should compare their proposals. Can they be combined and refined to create a class proposal? Students may wish to share their ideas with the community through publication of their ideas in your local or school newspaper. They also may wish to send their ideas to their state and federal legislators. To augment this exercise, you may wish your class to complete the debate activity suggested in the **Optional Reinforcement and Enrichment Activities**.

D. Concluding the Lesson

To conclude the lesson, have students discuss what they consider to be the most essential equality issues facing contemporary America. If students have been collecting clippings on equality and civil rights, have them review the clippings with the class at this time. (Save clippings concerning affirmative action for Lesson 16.) Then have students discuss their answers to the **Using the Lesson** questions or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Native American Rights Research.** Have students research the struggle for rights for Native Americans and present to the class what they have learned. After the presentation, have individual students write poems or short stories focusing on this issue and the values and important interests which underlie it. To initiate this project, you may wish to read the following to your class:

   > *We are deprived of membership in the human family....Our cause is your own—it is the cause of liberty and justice. It is based upon your own principles, which we have learned from you yourselves; for we have tried to count your Washington and Jefferson our great teachers too.*
   >
   > Sequoya, Cherokee Chief, Appeal to Congress, 1835

2. **Class Debate.** Hold a class debate on an amendment to ban discrimination on the basis of sex, age, and physical impairment or an amendment which would guarantee all citizens a job. Assign students positions to take. Each team should make a five-minute presentation to justify its position. Each team should be permitted two minutes to rebut opponent's arguments. Invite a panel of community leaders or students and teachers from another class to serve as judges.

3. **Rights Editorial.** Have students choose one of the following contemporary issues concerning equal protection. They should write editorials justifying their positions in their program journals.

   - Should a private airliner be allowed to lay off flight attendants who have gained an excessive amount of weight?
   - Should county supervisors be allowed to establish voting districts in such a way that minority populations are scattered?
   - Should law officials be allowed to enforce selectively a no-trespassing ordinance in order not to arrest immigrant squatters and homeless persons?
   - Should public schools be allowed to exclude children with AIDs from attending regular classrooms? Should private schools?
   - Should the military be permitted to ban homosexuals?
   - Should the FCC, which oversees broadcasters, be allowed to require licensees to hire minorities?
   - Should a public high school be allowed to prohibit students from taking dates of the same sex to the prom?
   - Should state universities be permitted to suspend students who tell jokes, wear clothing, or decorate their dormitory rooms in ways offensive to women and certain ethnic and racial groups?

Planning Ahead

In this next lesson, students will be completing a case study on affirmative action. You may wish to invite an attorney, judge, member of a civil rights organization, or legal reporter to class to participate in judging and discussing relevant issues.

Lesson 16

How Should the Effects of Past Discrimination Be Remedied?

Lesson Overview

This lesson deals with one of the most controversial issues raised by the Fourteenth Amendment, that of affirmative action. Students learn of the history and rationale for affirmative action as well as some types of programs available. Students will confront the issues raised by preferential treatment programs, especially quotas, in a critical thinking exercise based on the *Bakke* case. They will then consider the present guidelines used to determine what affirmative actions programs are acceptable under the equal protection clause. Students will also have an opportunity to evaluate these guidelines, consider their strengths and weaknesses, and make any suggestions for modifications they think appropriate.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the purposes of affirmative action programs, their relationship to the purposes of the Fourteenth Amendment, and the issues raised by affirmative action
2. take, defend, and evaluate positions on issues of affirmative action and on the present guidelines used to determine the constitutionality of affirmative action programs

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Reading and Discussion

Have students read the narrative sections which precede the critical thinking exercise. Ask questions, such as the following, to discuss the reading:

1. What was the importance of *Brown v. Board of Education* in promoting equal opportunity?
2. What examples can you give of the effects of past discrimination on women and minorities?

3. Which, if any, of the following do you favor and why: aggressive recruitment programs, remedial programs, or preferential treatment programs?
4. What important interests, such as cost, efficiency, the ability to compete in a worldwide economic marketplace, or rectification of past wrongs and injuries, should be considered when making public policy concerning equal opportunity issues?
5. How much should the needs, talents, and abilities of particular individuals be considered when deciding who should receive benefits such as job training, job promotion, or scholarships to educational institutions?
6. What fundamental values, such as human dignity or equality, should be taken into consideration?
7. In what ways might the use of quotas in job hiring and educational admissions programs correct past injustices? In what ways might the use of quotas promote injustice?

C. Critical Thinking Exercise: Examining a Supreme Court Opinion on Affirmative Action

To complete this case study, you may wish students to simulate oral arguments before the Supreme Court. First, each group of students should analyze the case and answer the questions posed. Then have members of each group count off—one, two, three. The "ones" of various groups will now form a new group to represent Bakke. They should work together to prepare a three-to-five minute argument on behalf of their client. Spokespersons should be selected to deliver the arguments. Other members of the group should be prepared to answer the justices' questions and rebut their opponents' positions. The "twos" should follow a similar procedure to represent the University of California.

The "threes" will form a group to play the roles of Supreme Court justices. They should prepare a list of questions to ask each side in the case. If you have invited a visitor to class, he or she may wish to participate as a member of this group, or travel between groups to facilitate preparation for the simulation.

After completing the simulation, debrief the activity by having students reevaluate their initial views about the case, using the questions posed in the exercise as a guide. Having heard the arguments of other students, have they changed their minds in any way? If they had been on the Court, how would they have decided this case and why? (Once again, caution students that they need not consider the majority Court opinion to necessarily be the "right" answer.)

D. Preparing for the Critical Thinking Exercise

Have students read about and discuss some of the considerations developed to determine the constitutionality of affirmative action programs. Then have them complete the critical thinking exercise which follows.

E. Critical Thinking Exercise: Evaluating Present Guidelines

Have students follow the directions given to complete this exercise. If a classroom visitor is participating, he or she may wish to facilitate discussion in one group while you work with another. After spokespersons have presented arguments for each side, debrief the activity using the questions provided.

F. Concluding the Lesson

To conclude the lesson, have unit docents share current concerns, court opinions, and pending legislation concerning affirmative action issues with the rest of the class. Students should then look back at their initial opinions about affirmative action which they noted in their program journals. On the basis of what they have learned during this lesson, do they wish to revise their views in any way?

After considering the questions posed in **Using the Lesson**, ask students to express their views about the following statement by Francis Wright, social reformer (1795-1852): "Equality!...Equal rights! They cannot exist without equality of instruction."

Finally, you may wish to refer back to the overall issue of equality of condition versus equality under the law, discussed in Lessons 15 and 16. What are your students' views on the following:

- What position should our government take on differences in wealth, power, and education?
- Would they support an amendment, widely discussed in recent years, to guarantee every adult of working age a job?
- Would they support a national health care policy for all Americans?
- What, if anything, should be done to rectify inequities in the educational system?
- What important interests, such as economic costs, efficiency, human resources and practicality, should be considered when making such decisions?
- What important values, such as equality, human life, and human dignity, should be considered?
- How would they define their own responsibilities in terms of the issue of equal rights and opportunities?

Alternately, you may wish students to answer the **Using the Lesson** questions as written homework.

Optional Reinforcement and Enrichment Activities

1. **Job Discrimination Case Study.** Have students research and present oral arguments for the rest of the class in the case of *Wards Cove Packing Co. v. Atonio* (1989). Arguments should focus on the central issues of who should bear the burden of proof when a worker complains that a company discriminates in its hiring or promotion practices.
2. **Affirmative Action/Reverse Discrimination Survey.** Have students work together to devise a survey about this controversial subject, asking questions similar to those discussed in this lesson. After surveying the school community, have students collate, analyze, and publish their results in their school or local newspaper. They also may wish to send the results to their congressional representative.
3. **Affirmative Action Op. Ed.** Have students write an Op. Ed. expressing their views about Professor Shelby Steele's statement that efforts to combat racial discrimination through quotas, affirmative action, racially weighted tests, and other techniques have psychologically handicapped minorities by making them dependent on racial preference programs rather than on their own efforts. Do you agree with him or his opponents, such as John Jacob, president of the National Urban League, who insist that racial discrimination is so entrenched at all levels of U.S. society that only affirmative action and similar programs can overcome it?

4. **Congressional Letter Writing.** Have students write letters sharing their ideas about the advancement of women and minorities. For example, would they favor the 1991 proposal of Senator Bob Dole and Congresswoman Susan Molinari to (1) establish a Glass Ceiling Commission with the goal of suggesting ways to improve the practices of corporate America which impede the advancement of women and minorities and (2) authorize the Department of Labor to begin a skilled trade apprenticeship program for women and minorities? Have them send their ideas to their representatives in Congress.

Lesson 17

How Does the Fourteenth Amendment Protect Substantive Due Process?

Lesson Overview

This lesson introduces students to the concept of due process and explains the difference between substantive and procedural due process. Substantive due process requires that the content, or substance, of laws be constitutional. Interpretations of substantive due process have been concerned with limiting the power of government by defining those situations in which the government cannot interfere. From the passage of the Fourteenth Amendment until the 1930s, the courts generally interpreted the due process clause to protect the property rights of business and industry. Since that time, the Supreme Court has used substantive due process to protect individual liberty, in particular the right of privacy. Students will deal with issues of procedural due process in Unit Five.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain what is meant by due process and describe the history of the concept
2. explain the difference between procedural and substantive due process
3. explain how the concept of due process has been used to protect individual rights
4. take, defend, and evaluate positions on what rights, not included in the Bill of Rights, they think should be protected by substantive due process.

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Reading and Discussion

Have students read about the history of the right to due process and what is meant by due process of law. Ask them to compare the language of the Fifth and Fourteenth Amendments. What is the main difference between them? What goals do they have in common?

To learn about the changing interpretations of the rights of substantive due process, have students read the remaining narrative sections. Guide discussion to consider what criteria students would use to decide if a government action violates the right to substantive due process.

Have the class consider important interests, such as promoting public health and safety, as well as the fundamental values of individual liberty, personal privacy, and the enjoyment of one's property. When these interests and values conflict, what do they think is most important to consider when trying to decide whether or not an action is constitutional? What criteria do they think should be used to decide when to limit an individual's right to liberty and property in order to benefit the society as a whole?

C. Critical Thinking Exercise: Proposing and Defending Rights

Have students work in small groups to develop lists of rights they believe should be beyond government control. In sharing and discussing their lists, have them explain why they think the rights should be protected.

Ask other students to be devil's advocates and question each group about the rights they have selected. Raise hypothetical situations in which it might be beneficial to the common welfare to limit the rights students identified. Once again, ask them to consider important interests, as well as fundamental values, in evaluating each other's suggestions.

To conclude the exercise, ask students to explain whether they agree or disagree with the following statement: "There is a point beyond which even the government cannot go in terms of limiting the expression of individual rights, even if such limitations would benefit society as a whole."

D. Concluding the Lesson

To conclude the lesson, you may wish to ask students who have collected clippings on substantive due process issues to present them to the class. Examples might include proposals to

- lift government regulations on private investors and businesses
- require individuals to wear motor cycle helmets or seat belts
- ban smoking in all bars and restaurants

Once again, ask student what important interests and fundamental values should be considered when deciding to support or oppose such laws and policies. In their opinion, what responsibility do they have in terms of protecting substantive due process rights? For example, if laws like those suggested above were being considered in their state, what would they do, if anything?

Finally, have students discuss the **Using the Lesson** questions or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Substantive Due Process Debate.** Ask students to choose one or more of the rights they identified during the Critical Thinking Exercise "Proposing and Defending Rights." Then have them stage a class debate over whether or not the government should be allowed to limit these rights. Each side should present a five-minute argument which highlights the important interests and fundamental values which would be promoted or undermined by each position. Allow two minutes for rebuttal. You may wish to invite a judge or other legal professional to judge the debate and guide a debriefing discussion afterwards.

2. **Economic Regulation Essays.** Have students write essays evaluating the following statement of Justice William O. Douglas and explaining their own position on the constitutionality and wisdom of the government economic regulation: "The day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be thought unwise, improvident, or out of harmony with a particular school of thought."

Lesson 18

How Does the Fourteenth Amendment Prohibit States from Violating the Bill of Rights?

Lesson Overview

With the ratification of the Fourteenth Amendment, the Constitution specifically prohibited the states from violating a person's right to life, liberty, and property. This amendment greatly increased the power of the federal government over the states. The Supreme Court has used the process of incorporation to protect people from state action that violates the protections of the Bill of Rights. Students will learn of the controversy surrounding the process of incorporation and the questions it raises about the nature of federalism and the rights of the states. They will study the arguments both for and against incorporation and then take a position on whether the Supreme Court should have such immense power over state and local governments.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain what is meant by incorporation
2. describe the arguments over incorporation
3. explain the process by which the Supreme Court incorporated the protections of the Bill of Rights
4. describe the effect that incorporation has had on the federal system and the power of the states
5. take, defend, and evaluate positions on the importance of the Supreme Court's power of judicial review over state governments

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference during the lesson.

As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Reading and Discussion

Write the phrase "nor shall any state deprive any person of... liberty...without protecting due process of law" on the chalkboard. Ask students what they think this phrase means. What types of freedom might be covered by this clause? What government acts might be prohibited by such a clause in the Constitution?

Then have students read about the rights which have been incorporated through interpretation of this phrase. Have students discuss how important they think it is to follow the original intent of the authors of the Fourteenth Amendment, or whether it is better to have a more flexible approach. What are the advantages and disadvantages of each approach?

Guide discussion to highlight how the Fourteenth Amendment and the changing interpretations of the Constitution have altered the intention of the Anti-Federalists who originally called for a bill of rights. In what way did the justices who supported a limited use of incorporation and were hesitant to change the balance of power in the federalist system reflect the views of the Jeffersonians, rather than the Hamiltonians? Which approach do your students agree with and why?

To help them come to a reasoned opinion about such issues, have them try to decide which rights they would consider fundamental. To do so, students should look at the rights protected in the original Bill of Rights and group them into three categories—rights of life, liberty, or property. Are all these rights fundamental? If not, why not? Should what is fundamental be the deciding factor for incorporation? What other important values and interests, if any, should be considered?

To explore this point further, hold an impromptu debate over incorporation, assigning groups of students the task of suggesting arguments in favor of or against a broad incorporation approach.

Alternately, create a class continuum, having students literally "take a stand" on the incorporation issue. Students favoring a broad approach should stand on the left side of the classroom and those favoring a narrower interpretation on the right. Students who favor a case-by-case approach should stand somewhere in the middle. Proceed through the line, having students explain why they are standing in that particular place in the continuum.

Finally, have students look at the rights which have *not* been incorporated. In their opinion, are any of these rights fundamental? Do they think all the rights listed in the Bill of Rights should be applied to the states? Why or why not?

C. Critical Thinking Exercise: Analyzing and Evaluating a Position on the Importance of Judicial Review

Travel between groups as they develop their opinions about Justice Holmes's statement. Groups recorders should take notes for a selected spokesperson to use when making his or her presentation on behalf of the group to the class. Once again, both majority and minority reports should be made.

In discussing the opinions of the class, have students cite historical incidents to support their views. You also may wish to examine the role of judicial review in protecting individual and minority rights and limiting government power at the federal, state, and local levels.

Ask students whether or not they think that there is too much "legislating from the bench." Has the power of judicial review upset the delicate balance of the federalist system of government designed by the Framers? Has it served as an additional safeguard to protect the rights of individuals and minorities from government encroachment?

You may wish to have students take a few minutes following class discussion to write down their ideas about these issues in their program journals or assign this task as homework.

D. Concluding the Lesson

Have students discuss their answers to the **Using the Lesson** questions. Alternately, these can be assigned as written homework. Then return to the question posed at the start of the lesson concerning the goals of the Anti-Federalists who had originally demanded a bill of rights. In what ways have these goals been advanced or undermined through incorporation?

Finally, conclude the discussion of this unit by asking students to express their views about the following statement made by constitutional scholar Leonard Levy: "The task of constitutional interpretation is one of statecraft: to read the text in the light of changing needs in accordance with the noblest ideals of a democratic society."

Optional Reinforcement and Enrichment Activities

1. **Incorporation Radio Show**. Have students stage a radio talk show to discuss whether rights that are presently not incorporated should be. If these rights were incorporated, what changes would be likely to occur in their state? Would these changes be desirable? A talk show host should briefly interview two guests in favor or against the proposal. Listeners should then call in with their comments and opinions. Students may wish to tape the show for replay.
2. **Ode to Equality**. Have students chose a poetic form, such as an ode, sonnet, or haiku, and compose a poem about what equality means to them and how closely our society lives up to this ideal.

Student Unit Review

You may wish to reproduce the following Student Unit Review for your students. The entire review may be used as a unit test, or you may choose to assign sections for homework or as a classroom study guide to help students review the unit. For Unit Three, Section B, the TRUE statement is number 2.

STUDENT UNIT THREE REVIEW

A. Use each of the following terms in a sentence to show you know its meaning:

- judicial review
- segregation
- due process
- fundamental rights
- incorporation

B. Identify each true statement and correct each false statement.

1. The years following ratification of the Constitution proved that Anti-Federalist concerns that government would abuse individual and minority rights were unfounded.
2. Different interpretations of the right to property and the nature of the social contract contributed to the causes of the Civil War.
3. The Civil War Amendments immediately achieved their goals.
4. African Americans learned to rely on their government representatives at the state and federal level to see that their rights were protected.
5. Substantive due process is primarily concerned with criminal procedures.
6. Equal protection of the laws guarantees all Americans the same economic, social, educational, and political conditions.
7. The incorporation doctrine has promoted state sovereignty by limiting the authority the federal government exercises over states.

C. Write a short essay to answer two of the following questions:

1. Why did the Bill of Rights fail to adequately protect the rights of individuals and minorities in the nineteenth century?
2. In what ways have all three branches of government played a role in expanding equality under the law?
3. What important interests and fundamental values are at issue in determining whether or not to promote equality of condition?
4. What criteria have been used to decide which rights should be incorporated?

D. What do you think? Express and justify your opinion about the following question:

In your opinion, what is the most critical issue in terms of equal protection of the law facing contemporary American society? What is your position on this issue?

© Center for Civic Education
Limited reproduction rights granted for school use only.
With Liberty and Justice for All

Unit Four

What Rights Are Protected by the First Amendment?

Unit Overview

The First Amendment protects the rights to freedom of religion and expression. In this unit, students will examine these protections in detail, beginning with two lessons on freedom of religion. In each lesson, students will learn about the historical significance and contemporary importance of the particular right being studied. Students will then consider the problem of balancing the individual rights protected by the First Amendment against other values and interests of society. In some instances, these may conflict. It has been the responsibility of government, particularly the courts, to decide whether to limit freedom of religion or expression under certain circumstances. Students will examine the criteria used by the courts to consider such limitations and then apply these criteria to specific situations. Students will be asked to take and defend a position on the issues involved in limiting the freedoms protected by the First Amendment.

Unit Objectives

At the conclusion of this unit, students should be able to

1. explain the purposes and importance of the rights protected by the First Amendment
2. describe the historical background of these rights
3. describe the differences between the establishment and free exercise clauses
4. explain the different interpretations of the establishment clause
5. explain the issues involved in limiting the free exercise of religion
6. explain considerations used to place limits on freedom of expression
7. take, defend, and evaluate positions on First Amendment issues

Unit Introduction

Have students turn to Unit Four and read the **Purpose of Unit** section. Note the key themes which you may wish a student to write on the chalkboard for reference:

- Through incorporation, the First Amendment now prohibits both state and federal governments from violating freedom of religion and expression.

- First Amendment rights are considered among the most important in the Constitution and critical to the functioning of a free, pluralistic society.
- Despite the seeming clarity of the First Amendment, its meaning, application, and limitations have been debated since its ratification.

Next have students examine the **Timeline.** Students who have been collecting clippings on various constitutional issues should be prepared to present current concerns to the class as each section of the Bill of Rights is discussed.

Planning Ahead

In this unit, students will discuss freedom of religion and expression both in community and school situations. You may wish to make available your school's rules or guidelines about these issues for reference during discussions and class activities.

Lesson 19

Why Does the First Amendment Prohibit the Establishment of Religion?

Lesson Overview

This lesson introduces students to the religion clauses in the First Amendment and explains the distinction between the establishment and free exercise clauses. Lesson 19 will concentrate on the establishment clause; the next lesson will focus on free exercise. In this lesson, students will examine the sources of the Founders' beliefs about the need to separate church and state. The establishment clause says that "Congress shall make no law respecting an establishment of religion." Students will consider different interpretations of this clause and the controversies that have arisen its meaning. They will have an opportunity to examine a number of issues involving the establishment of religion and decide the values and interests involved and what position they would take.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the purposes of the establishment clause
2. describe the differences between the establishment and free exercise clauses
3. describe this history of the growth of religious freedom
4. explain the different interpretations of the establishment clause
5. take, defend, and evaluate positions on an issue involving the establishment clause

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Then, ask students to offer suggestions of acts which they would consider to be "establishment of religion" by the government. Have them jot down their ideas for later reference.

B. Reading and Discussion

Have students read about the historical experiences which influenced the Founders' thinking on the establishment of religion. Ask students to recall the view of classical republicans about established religion and government involvement with religious and moral education. In discussing "Religious conflict in Europe," note that Protestant rulers as well as Catholic rulers practiced discrimination. Henry VIII of England, for example, imprisoned, killed, and dispossessed Catholics. All established Christian churches, at one time or another, sanctioned discriminatory laws and brutal pogroms against Jews.

As students proceed through the reading, have them note examples of both religious tolerance and intolerance during the colonial period. You may wish to augment these historical examples by sharing the following incidents. In each case, have students identify whether the historical example is one of tolerance or intolerance. You may later wish students to act out conversations between some of the following people concerning issues of religious freedom.

- You are Peter Stuyvesant, governor of New Amsterdam. You have issued an edict to prevent Jews on a Dutch ship, headed for Brazil but which ran off course, to settle in your city. You say that you do not want them to "infect the colony. If we give them liberty," you explain, "we cannot deny their brethren the Papists."
- You are Mary Dyer. As the hangman's noose is placed around your neck because you refuse to renounce your Quaker beliefs, you shout over the drumroll: "My life availeth me not in comparison to the liberty of the truth."
- You are a trustee of Harvard University. You vote with the majority to forbid the admittance of Jews who refuse to publicly convert to Christianity.
- Your name is Edward Burrough. You secretly publish and distribute a pamphlet denouncing religious intolerance, calling "New Englande a Degenerate Plant." You write that Puritans, "having forgot their former Sufferings...have faire outstrip their persecutors."
- It is 1662 and you, Magistrate Richard Waldron, have ordered two women who "speak and write blasphemous opinions...[to be] dragged through dirt and snow...and whipped."
- Your name is Jane Walford. You have successfully sued a neighbor who, in 1656, accused you of being a witch. You have been awarded 5£ and court costs.
- Your name is Cassandra Southwick. You are five years old and have been sold into slavery in the West Indies after your Quaker parents died in prison. However, the kind Portsmouth sea captain, paid to transport you, refuses to do so and adopts you into his own family.
- Your name is Goody Cole. A neighbor says you hexed his boat and made it sink in a storm. Another neighbor accused you of poisoning his cows and having dinner with elves in pointed red hats. In 1692, you are condemned to life imprisonment. Upon death, you will have a stake driven into your heart and be thrown in a roadside ditch.

In discussing "What led to increased religious toleration in the colonies?" refresh your students' memories concerning the influence of the Reformation and Great Awakening on the colonists' ideas about rights and government. You may wish to mention that many of the authors of both the state and federal constitutions were men who themselves had personal experience as members of dissenting sects. Examples include William Plumer, a radical Anabaptist, and James Madison who professed Unitarian beliefs and chose to attend Princeton University because of its opposition to church hierarchies and established religions.

It is important to stress, however, that opposition to established religion did not necessarily mean opposition to religious and moral instruction. Like classical republicans, many Founders believed in the importance of moral and ethical education as a means to instill civic virtue and thereby promote republican values.

Note that although most Founders believed the *federal* government should have nothing to do with promoting religious and moral education, many believed that it was the obligation of *states* to do so. Many state constitutions included provisions designed to inculcate social virtues, morality, piety, and a "frequent recurrence to the fundamental principles of the Constitution and a constant adherence to justice, moderation, temperance, industry, frugality, and all the social virtues...indispensably necessary to preserve the blessings of liberty and good government."

Have students compare the views of Madison, Jefferson, and Williams. At this point, you may wish students to look once again at the lists they made at the beginning of the lesson, comparing their ideas about separation of church and state with those of the Founders described in the lesson. Point out the two fundamental reasons given by Americans like Williams and Jefferson for opposing establishment. Ask students to express these two viewpoints in their own words.

In discussing religious freedom and the Constitution, remind students of the experience of Haym Solomon which they read about in Lesson 10. Ask students to remember that although religious tests for federal office were banned, many states permitted such tests. Ask students to express why Article VI of the Constitution was so significant and revolutionary in an eighteenth-century world.

C. Preparing for the Critical Thinking Exercise

Have students read "How have the courts interpreted the establishment clause?" You may wish to divide the class into three groups for general discussion purposes. After reading about the three different schools of interpretation, pose a few situations which raise establishment issues. Call on members of each group to state how people taking that particular position might feel about the following situations:

- "In God We Trust" on coins
- Public school study of religious works such as the Bible, Bhagavad Gita, Koran, and I Ching in terms of world literature
- The singing of hymns in public school choruses
- Christmas programs during public school assemblies
- Pupil-free days in public schools which happen to coincide with Christian and Jewish religious holidays
- A federal appropriation which permits federal funds to go to parochial schools to buy textbooks in order "to promote better education"
- The president's annual lighting of a national Christmas tree and the First Lady's hosting of a White House Easter egg hunt

D. Critical Thinking Exercise:
Taking and Defending Positions on Issues Regarding the Establishment of Religion

Have students complete the group activity as described in the text. In explaining the case to fellow classmates, have spokespersons describe what the positions of all three interpretive schools might be. Each student also should be prepared to justify his or her personal opinion.

In debriefing the activity, compare and contrast the cases by asking questions. For example, is the fact that New York State required teachers to begin school with a prayer significantly different, in terms of deciding constitutionality, from New York City's voluntary program which allowed schools to decide whether or not to release students for instruction?

You also may wish to share some of the following information about each case. Ask students for their opinions about the positions taken by the majority and minority. Note, however, that the majority opinions are *not* necessarily the "right" answers.

1. *Everson v. Board of Education* (1947): Five of the justices thought the program was acceptable, since in their opinion, it was designed to promote safety, a legitimate concern of government, by encouraging children to take a bus to school rather than walk or hitchhike. The four justices who disagreed argued that the program was designed to make it easier for parents to send their children to religious schools. In their opinion, the establishment clause is meant to prohibit government from offering these kinds of special benefits to religious institutions. The majority conceded

   > *that...there is even the possibility that some of the children might not be sent to church schools if the parents were compelled to pay their children's bus fares out of their own pockets when transportation to public school would have been paid for by the State....[However] state paid police officers, detailed to protect children going to and from church schools from the very real hazards of traffic, would serve much the same purpose. Similarly, parents might be reluctant to permit their children to attend schools which the state had cut off from such general government services as ordinary police and fire protection, connections for sewage disposal, public highways and sidewalks....[The First Amendment] requires the state to be neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used to handicap religions as to favor them.*

   The dissenters warned, however, that

   > *public money devoted to payment of religious costs, educational or other, brings the quest for more. It brings too the struggle of sect against sect for the larger share....It is the very thing that Jefferson and Madison...had sought to guard against....Nor is this case comparable to one of furnishing fire or police protection, or access to public highways. These things are matters of common right, part of the general need for safety. Certainly the fire department must not stand idly by while the church burns.*

   Refer students also to question 8 in **Using the Lesson** for Justice Black's views in this case.

2. *Zorach v. Clauson* (1952): A majority of the justices upheld the program:

   > *We are a religious people whose institutions presuppose a Supreme Being....When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups.*

The dissenters argued that the program was an example of the government illegitimately using its coercive power to assist religious schools in obtaining pupils:

> *If public education were taking so much of the pupils' time as to injure the public or the students' welfare by encroaching upon their religious opportunities, simply shortening everyone's school day would facilitate voluntary and optional attendance at church classes. But that suggestion is rejected upon the ground that if they are made free, many students would not go to church. Here schooling...serves as a temporary jail for a pupil who will not go to church. It takes more subtlety of mind than [we] possess to deny that this is governmental constraint in support of religion...[As for] the Court's suggestion that opposition to this plan can only be anti-religious, atheistic, or agnostic...[our] evangelistic brethren confuse an objection to compulsion with an objection to religion.*

See also question 7 of **Using the Lesson** for Justice Douglas's comments in this case.

3. *Engel v. Vitale* (1962): Even though students who chose not to participate could leave the room or remain silent, the Supreme Court struck down a requirement that public school students begin the school day by saying aloud: "Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country." The majority argued that

> *it is no part of the business of government to compose official prayers for any group of the American people to recite as a part of a religious program carried on by government. [This kind of union of government and religion] tends to destroy government and to degrade religion.*

One justice dissented. He argued that this non-denominational prayer "did not amount to a formal establishment of an official religion" and therefore did not violate the First Amendment any more than the daily invocation to God before Supreme Court sessions, prayers in Congress, the third stanza of our national anthem, the phrase "one nation under God" in the pledge of allegiance, the congressionally legislated "National Day of Prayer," or "In God We Trust" on coins. You may wish students to consider each of these examples and note whether they think each is constitutional.

Note also that in *Sands v. Morongo Unified School District* (1991), the majority ruled that prayer at a high school graduation ceremony did not violate the First Amendment.

4. *Lynch v. Donnelly* (1984): The majority ruled that the publicly funded display which included traditional winter solstice symbols, a non-denominational holiday greeting, and Christian symbols did not violate the Constitution.

> *There is an unbroken history of official acknowledgement by all three branches of government of the role of religion in American life from at least 1789....When viewed in the proper context of the Christmas holiday season, it is apparent that...there is insufficient evidence to establish that the [display] is a purposeful or surreptitious effort to express some kind of subtle governmental advocacy of a particular religious message....The creche in the display depicts the historical origins of this traditional event long recognized as a national holiday. [These] are legitimate secular purposes.*

The dissenters, however, argued that it was a

> *plain fact [that the display] amounts to an impermissible governmental endorsement of a particular faith....The effect on minority religious groups, as well as on those who may reject all religion, is to convey the message that their views are not similarly worthy of public recognition, nor entitled to public support.*

You may wish to note that in 1989, the majority of the Court ruled that a Christmas display including a creche and a banner proclaiming "Gloria in Excelsis Deo" (Glory to God in the Highest) in the Pittsburgh courthouse had "the effect of endorsing a patently Christmas message" and therefore violated the First Amendment. However, the Court also ruled that an outdoor display including a Christmas tree and a Hanukah menorah was constitutionally permitted. Other justices objected to both displays, and still others believed both should be permitted. See *Allegheny County v. ACLU*.

E. Concluding the Lesson

Conclude the lesson by asking students who have been collecting clippings on establishment issues to update the class. What national, state, and local issues concerning the establishment clause have been in the news? What is your school policy concerning issues like those raised in this lesson? Does your city or town erect publicly funded holiday displays on public property?

In helping students to summarize the key points in the lesson, be sure to ask them to describe times that they think it is legitimate for government to aid religious institutions. To extend discussion, you may wish to ask your students to consider the following: If the fire department can extinguish a church fire, would it be constitutional for the government to

- provide funds to rebuild the burnt-out church?
- provide financial aid to make all temples and churches in a community earthquake-safe?
- supplement parochial school teachers' salaries if children attending the school represent many faiths?
- provide children in parochial school the benefits of a free government-sponsored inoculation program to prevent a measles epidemic?
- begin public school each morning with a moment of silence for personal prayer, meditation, or reflection?
- declare some religious holidays public holidays, but not others? Or are all such holidays unconstitutional?

Once again, have students refer back to the list they made at the beginning of the lesson concerning government actions which they think would violate the establishment clause. Have their ideas changed during the course of this lesson? What important interests and values should be considered in order to determine when government has violated the establishment clause?

Finally consider the **Using the Lesson** questions or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Tolerance Monologues.** Have students write monologues about religious freedom from the point of view of one of the historical personages mentioned in this lesson or in the teacher's guide. For example, Anne Hutchinson wrote, "It was never in my heart to slight any man, but only that man should be kept in his place and not sit in the room of God." Students may wish to record their monologues to share with others at the Learning Center.

2. **Establishment Survey**. Have selected students conduct a survey of the school community on establishment issues. Begin with asking individuals whether or not they agree with general statements representing the views of different schools of interpretation. (See "How have the courts interpreted the establishment clause?" section of this lesson.) Then ask questions based on establishment issues like those suggested in the student book and in the teacher's guide section "Preparing for the Critical Thinking Exercise." Results should be analyzed and published in your school or local newspaper. The analysis should include a comparison of your school's policies on establishment issues with the anonymous opinions of members of the school community.

3. **Oral Arguments and Op Eds**. Have student teams present arguments in a Supreme Court or state appellate court case concerning an establishment issue. Students should research the selected case, and possibly work with a law student or attorney to prepare two-to-three minute opposing arguments. Classmates should then vote on the case, and afterwards express their opinions either verbally or in a one-page "Op Ed" article. Cases to consider might be: *Wooley v. Maynard* (1966), *Abington School District v. Schempp* (1962), *Wallace v. Jaffree* (1985), *Marsh v. Chambers* (1983), *Allegheny County v. ACLU* (1989).

4. **Congressional Debate**. Have students simulate a congressional debate concerning the propriety of continuing the two hundred-year-old tradition of opening sessions of Congress with non-denominational prayers.

Planning Ahead

You may wish to leave the list of **Terms to Know** on the chalkboard for reference during study of the next lesson.

Lesson 20

How Does the Free Exercise Clause Protect Your Freedom of Religion?

Lesson Overview

In this lesson, students will learn there are two parts to the idea of freedom of religion: the freedom to believe and the freedom to practice one's beliefs. The first is absolute; the second is not. The right to practice one's beliefs may be limited under certain conditions. Students will examine different situations in which the practice of religious beliefs may conflict with other important values and interests of society. They will consider the issues involved in setting limitations on religious practices and have an opportunity to take a position on a particular case involving the free exercise clause. Finally, students will look at the conflicts between the establishment and free exercise clauses.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the difference between the freedom to believe and the freedom to practice one's beliefs
2. explain the importance of freedom of religion and conscience
3. explain some of issues and considerations involved in deciding when to limit religious practices
4. explain the conflicts that may exist between the establishment and free exercise clauses
5. take, defend, and evaluate positions on issues regarding the free exercise of religion

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. There are no new **Terms to Know** in this lesson, although the ones introduced in Lesson 19 are still appropriate. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Critical Thinking Exercise: Examining the Importance of Freedom of Religion

Have students divide into groups to discuss the hypothetical. Students should refer back to discussions and reading in the previous lesson to analyze the situation and answer the accompanying questions.

You may wish to travel between groups as students work on drafting their amendment. Be sure to explain to them that they need not feel restricted by the language of the First Amendment. They may wish to include other provisions and perhaps explanatory language similar to that often used in state declarations of rights to express the moral or philosophical basis for their amendment.

C. Preparing for the Critical Thinking Exercise

In preparation for the next exercise, have students read the short narrative section about the free exercise clause. Ask students to explain how the free exercise and establishment clauses are related. Before proceeding, students should suggest important interests and values they think should be considered when trying to determine how to protect and limit these First Amendment rights.

D. Critical Thinking Exercise: Taking and Defending Positions on Issues Regarding the Free Exercise of Religion

Have each group consider each of the five situations which are based on actual cases. Alternately, divide the class into five groups, assigning each group one situation to analyze and discuss. Students should share their views by presenting majority and minority reports to the class. Emphasize that these are controversial issues and that it is perfectly permissible for one or two students to dissent from the majority of their group, or for them to agree with their classmates in principle, but perhaps for different reasons. If the latter is the case, these students should present their concurring opinions.

During class discussion, compare the five situations. In what ways are they similar or dissimilar in terms of the rights considered, the possible consequences of limiting the rights, and the values and interests which might be promoted or undermined by limiting the right? From their discussion, can the class come to a consensus about what criteria or guidelines should be used when making decisions about such issues? If not, what is the nature of their disagreements?

You may wish to share the following information with your students concerning the cases upon which the five examples are based. However, caution students that the majority opinions are not to be considered the "right" answers:

A. *West Virginia v. Barnette* (1943): The Court ruled that the government could not punish the children of Jehovah's Witnesses who refused to pledge allegiance to the flag because their parents had taught them that to do so violated the Second Commandment, "Thou shalt not make unto thee any graven image." Justice Jackson wrote "if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

   Note that this was just one of a number of flag salute cases which came before the Court in the 1940s, at a time when saluting the flag in public school was a compulsory practice in many states. The rulings in these cases were a turning point in our constitutional history. They marked the beginning of a trend towards civil libertarian activism. Note also that in a number of these cases, appellants based their arguments on the substantive due process clause of the Fourteenth Amendment. Arguments in favor of the school district were based on the ruling in the *Reynolds* case (see below) and the doctrine that a religious objection did not relieve an individual from the responsibility of complying with an otherwise valid secular regulation.

B. *Jacobson v. Massachusetts* (1905): The Court ruled that a state can require all children to be vaccinated, even if a family's religion teaches a child to put his faith in God in matters of health and not to accept medicine. The Court explained that the failure to vaccinate some of the children might put other children at risk, and that one does not have a right to engage in religious conduct, such as snake handling, that puts others at risk. Justice John Marshall Harlan, writing for the majority in this 7-2 decision, ruled that the regulation was within the police power of the state and violated no constitutional rights.

It is important to emphasize that at the time of this case, the First Amendment had not been incorporated and did not apply to the states. Harlan argued, therefore, not on the basis of the First Amendment but on the substantive due process rights of the Fourteenth. He concluded that the due process clause implied no absolute right to control one's own body. Note that this ruling has been interpreted to allow fluoridation of community water to prevent tooth decay and similar public health laws and policies.

C. *Prince v. Massachusetts* (1944): When the life, health, and safety of the community at large comes in conflict with the beliefs and religious practices of individuals, the Court has ruled that the general welfare supersedes individual rights. Where the life, health, and safety of individuals rather than the community at large is involved, the Court has ruled that if the individuals are children, a court can intervene and order medical attention, such as transfusions, regardless of parental or guardian objections on religious grounds. "Parents may be free to become martyrs themselves. But it does not follow that they are free...to make martyrs of their children before they have reached the age of full and legal discretion, when they can make the choice for themselves."

D. *Reynolds v. U.S.* (1879): The Court unanimously upheld the law against polygamy. It ruled that while the government cannot simply punish people for being of a certain faith and believing in its precepts, it can punish individuals for engaging in behavior that the government considers immoral or harmful, even if their faith teaches its followers to perform such practices. The opinion stated that those who made polygamy part of their religious practice could no more be exempt from prosecution for criminal behavior than those who practiced human sacrifice as part of their religion.

E. *United States v. Seeger* (1965): The 1940 Selective Service Act set the basic terms of exemption from the system of compulsory military service. A person was "eligible who by reason of religious training and belief, [is] conscientiously opposed to participation in war of any form." Someone opposed to noncombative service could perform alternative service. In a subsequent case, an appellate court defined religious belief very broadly. In 1948 Congress defined religious belief as belief in "a Supreme Being involving duties superior to those arising from any human relation." Congress wanted to excuse only those persons opposed to all wars, not those opposed to particular wars, and only those with rather traditionally recognized religious beliefs and affiliations. A number of cases resulted as a result of these distinctions.

In this case, the majority ruled that persons who spoke of a "religious faith in a purely ethical creed" could be exempted because their beliefs occupied a place in their lives similar to those who were members of particular religious groups. In 1970, in a similar case (*Welsh v. U.S.*), Justice John Marshall Harlan wrote that any attempt by the government to distinguish religious objectors from equally sincere nonreligious ones constituted establishment of religion. A 1971 case (*Gillette v. U.S.*) concerned both religious and nonreligious objectors to the Vietnam War. The Court upheld the congressional determination not to exempt those who disagreed with a particular war, rather than war in general. Note that exemption for conscientious objectors is based on congressional law, not constitutional law at the federal level. Some state constitutions, however, have specific protections for exempting conscientious objectors from service in state militias.

E. Reading and Discussion

In discussing the reading section which follows the exercise, have students compare the criteria they discussed with those used by the courts in the past. Upon what interests and values are the criteria based?

You may wish students to express, by a show of hands or by standing in a continuum line, their opinion about the constitutionality of peyote use in traditional Native American Church rituals. After expressing and justifying their views, they may wish to compare them with the Supreme Court decision in this case, *Employment Division v. Smith* (1990).

> The Court allowed the state of Oregon to deny unemployment benefits to two Native Americans who were fired from their job because it was discovered that they had used peyote, an illegal substance, as part of their religious services. The Court held that the First Amendment excludes all government regulation of religious beliefs but does not prohibit the government from passing general laws that are not specifically directed at religious practices. "[Otherwise] each conscience [would be] a law unto itself."
>
> Dissenters, however, pointed out that peyote was an integral part of ancient religious practices which predated the Constitution and, therefore, the government had to show a compelling interest in order to outlaw those practices. They believed that there was no such interest in this case and that the government should not be allowed to prevent the rituals of sincere religious practitioners in very controlled conditions.

F. Critical Thinking Exercise: Taking and Defending Positions on Issues Regarding the Free Exercise of Religion

This exercise is based on the landmark case of *Wisconsin v. Yoder* (1972). You may wish students in each group to count off—one, two, three. During small group discussion, the "ones" should argue in favor of the state and the "twos" in favor of the Yoders. The "threes" should play the parts of justices, asking questions of members of each group. After completing this role play within groups, individual students should express and justify their own personal views about the case. The group should then come to a consensus, or present majority and minority reports to the class for discussion.

In debriefing the exercise, you may wish to have students talk about the case in terms of the points raised by the Court. Chief Justice Warren Burger rejected the state's argument that belief not action was protected by the free exercise clause. He cited *Sherbert v. Verner* (1963), in which a Seventh Day Adventist lost her mill job because she refused to work on the Sabbath. The majority ruled that observance, as well as belief, was protected by the First Amendment if no compelling state interest could be shown—a significant departure from the secular regulation approach of earlier cases.

Burger asserted there was no compelling state interest that would justify forcing Amish children to attend public high school against their beliefs. Nothing indicated the children would suffer from a lack of a high school education, given the lifestyle of the religious community in which they lived. Justices White, Brennan, and Stewart concurred, although noting that many Amish eventually left the community to live in the outside world where a high school education is beneficial. Justice Douglas dissented, arguing on the basis of children's rights.

G. Reading and Discussion

Have students discuss the divisions on the Court in terms of interpreting the establishment and free exercise clauses. Have students compare the differences which exist among themselves with those that have existed among the justices.

In what ways do your students differ on the issues raised about the conflicts between the free exercise and establishment clauses? In what ways are the situations presented similar or dissimilar? What guidelines can students suggest for making decisions in such cases? When having to draw a line between these two competing rights, what important interests and fundamental values do they think should be promoted or protected? Have students express and justify their views.

H. Concluding the Lesson

To conclude the lesson, you may wish students to consider the following recent case. Students should evaluate the majority and minority arguments, noting the values and interests in conflict. How would they have decided the case and why? Have students discuss their views in class or write a one-page opinion as a homework assignment. Alternatively, selected students might present oral arguments in the case to their classmates at a later date.

- *Lyng v. Northwest Indian Cemetery Protective Association* (1988). The Court allowed the federal government to build a road and engage in timber harvesting in a national forest even though the activity "virtually destroyed the Indians' ability to practice their religion [due to the irreparable damage of] sacred areas which are an integral and necessary part of [their] belief systems....[It] is true that this Court has repeatedly held that indirect coercion or penalties on the free exercise of religion, not just the outright prohibition, are subject to scrutiny under the First Amendment. This does not and cannot imply that incidental effects of government programs, which make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, require government to bring forward a compelling justification for its otherwise lawful actions....Government simply could not operate if it were required to satisfy every citizen's religious needs and desires."

  Dissenters pointed out the totally devastating and unprecedented effect that this government action would have on traditional religious practices and contrasted it with the government's interests in making financial profits from lumbering. "Today's ruling sacrifices a religion at least as old as the Nation itself, along with the spiritual well-being of its 5000 adherents, so that the Forest Service can build a six-mile segment of road that two lower courts found had only the most marginal and speculative utility." They argued that religious practitioners challenging a government action under the free exercise clause should be required to show that the action would substantially threaten their religious practice. Once shown, the government should be required to articulate a compelling state interest sufficient to justify the infringement of that practice.

Afterwards, ask students who have been collecting clippings on other contemporary free exercise issues to update the class. What national, state, and local issues have been in the news? What is your school policy concerning issues like those raised in this lesson? What suggestions, if any, would your class make to amend or reform your school policy on establishment and free exercise issues and why? A group of students may wish to record the suggestions and justifications for them. The suggested policy changes could then be presented to the principle or school board members.

Finally, consider the **Using the Lesson** questions or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Oral Arguments.** Have students work in pairs to present oral arguments concerning one of the following cases. After each two-to-three minute argument, have classmates ask questions concerning each advocates's position. Then have a class vote on the case.

   - *Thornton v. Caldor, Inc.* (1985) in which the Court held that a Connecticut law which provided that "those who observe a Sabbath day of the week as a matter of religious conviction must be allowed to do so, regardless of the burden that places on their employer." Some justices argued that this ruling "has a primary effect that impermissibly advances a particular religious practice," thus violating the establishment clause.

   - *Goldman v. Weinberger* (1986) in which the Court rejected an Orthodox Jewish psychologist's claim that the free exercise clause required the Air Force to make an exception to its uniform dress requirements by permitting him to wear a yarmulke while on duty in a military hospital. The Court ruled that the military's interest in uniformity was more important than an individual practicing his religion.

2. **Establishment or Exercise?** Have students stage a "Meet the Press" news show concerning religious freedom. A panel of students should play the parts of reporters. They should ask students, assigned various interpretative positions, questions based on the situations and issues discussed during the last two lessons. The show might be taped for later viewing.

3. **Religious Freedom Short Story.** Have students write short stories about individuals who have struggled for religious freedom. The stories can be fiction or based on actual historical personages.

4. **Tolerance and Intolerance Reviews.** Have students write reviews of plays, films, and novels which raise issues of religious establishment and exercise. Suggestions might include *1984*, *The Crucible*, *Ten Sovereigns for Sister Sarah*, and *Friendly Persuasion*.

Planning Ahead

In the next lesson, students will be discussing the scope and limits of freedom of expression in an academic setting. You may wish to have your school rule book on hand to discuss this subject in terms of the guidelines set in your school or district.

Lesson 21

How Does the First Amendment Protect Your Freedom of Expression?

Lesson Overview

The First Amendment protections of free speech, press, assembly, and petition are considered necessary to protect the right to express one's ideas and beliefs. Students were introduced to the concept of freedom of the press in Lesson 3. This lesson expands on the protections of free press and speech. Students will learn why freedom of expression is important to both the individual and society and the historical significance of the First Amendment. They will then consider the difficult question of when freedom of expression should be limited and under what conditions. In examining this issue, they will look at different approaches scholars and judges have taken. Finally, students will explore an issue of free speech that has particular relevance in their own lives, that of speech codes on college campuses.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the importance of freedom of expression to both the individual and society
2. explain the historical significance of freedom of expression
3. explain considerations useful in deciding when to place limits on freedom of speech and press
4. take, defend, and evaluate positions on positions regarding the proper scope and limits of freedom of expression
5. take, defend, and evaluate positions on issues involving the right to freedom of expression

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

In this lesson, students will complete an activity concerning free expression in educational settings. In preparation, you may wish to begin class with a look at your school rules concerning free expression. This would include rules concerning appropriate speech and conduct, as well as other rules such as dress codes. Have students take a moment to jot down in their program journals their initial views concerning

the limits these rules place on their freedom of expression. Do they believe these limits are justified? Students should save their notes for later class discussion.

B. Reading and Discussion

Have the class read about the importance of freedom of expression in a free society. Ask them to paraphrase the quotations of Franklin, Holmes, and Hand and state whether or not they agree with them. Then have students give examples of each of the benefits of freedom of expression discussed in this section. Can they think of additional benefits which result from promoting freedom of expression? Given these benefits and their importance to a free society, ask students when the right to freedom of expression should be limited and why. Make a chalkboard list of their ideas for later reference.

Then have students read the section on commonly accepted limits on freedom of expression. How do these limits compare with the list they suggested earlier? Do they agree with the limits commonly imposed by our government? What important interests and fundamental values are either undermined or promoted by placing such limits on freedom of expression?

During your discussion, you may wish to share the following statement by Justice Oliver Wendell Holmes, Jr.:

> *The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing panic. It does not even protect a man from an injunction against uttering words that may have the effect of force. The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantive evils that Congress has a right to prevent.* (*Schenck v. U.S.*, 1919)

Do your students agree or disagree with Justice Holmes? Why? Have students read the two narrative sections concerning the history of freedom of expression in America. In discussing the situation under British rule, remind students that English documents about rights were generally written to protect the rights of members of Parliament from the Crown, not the rights of individuals from government.

Provisions in state declarations and the First Amendment which safeguarded the freedom of speech of individuals in society were a departure from British and colonial practices. However, students should be cautioned that the Founders did not think of freedom of expression in the same way as most Americans do today.

In the course of discussion, you may wish to share the following information about the Zenger trial with your class, if they are not already familiar with this landmark case:

> In 1710, John Peter Zenger, a German immigrant, was hired as a printer's apprentice by William Bradford, who had once been tried and convicted for printing Quaker broadsides. In 1733, Zenger and his wife Anna Catherine founded their own printing house. They were soon contracted by the Popular Party to print the first political opposition newspaper in America, *The New York Weekly Journal*. Because of articles which ridiculed the government, the press was ordered shut down in 1734 and Zenger was arrested. He was imprisoned for eight months because he refused to reveal the names of the editors and writers. Meanwhile Anna defied government authority by continuing to print, consulting with her husband through a small hole in the jail door.
>
> In August of 1735, Zenger was tried. He and his lawyer, Andrew Hamilton, decided that their defense would be the truth; in other words, if what was printed were true, he should not be held libel. This was an extraordinary new concept, for British law was

"the greater the truth, the greater the libel." When the royal judge dismissed the argument and forbade the entry of evidence to prove the truth of what had been printed about the government. Hamilton appealed directly to the jury. He claimed that Zenger had a right and duty as a free human being to make others aware of the abuse of power by the government. His argument was based on a classical republican sense of civic duty, natural law, and the traditional common law rights of Englishmen. Today, it is still one of the most eloquent statements of the importance of freedom of expression if people are to limit government power and hold public officials accountable for their actions.

> *[It] is a right which all free men claim, that they are entitled to complain when they are hurt. They have a right publicly to demonstrate against the abuses of power in the strongest terms, to put their neighbors upon their guard against the craft or open violence of men of authority and to assert with courage the sense they have of the blessings of liberty, the value they put upon it, and their resolution at all hazards to preserve it as one of the greatest blessings that Heaven can bestow....Power may justly be compared to a great river—while kept within its due bounds it is both beautiful and useful. But when it overflows its banks...it bears down all before it and brings destruction and desolation....If then this is the nature of power, let us at least do our duty and like wise men who value freedom use our utmost care to support liberty, the bulwark against lawless power....I cannot but think it my and every honest man's duty that while we pay all due obedience to those in authority, we ought at the same time to be upon our guard against power....The question before the court and you, gentlemen of the jury, is not... the cause of one poor printer, nor New York alone....No! It is the cause of liberty. By an impartial and incorrupt verdict, you will have laid a noble foundation for securing for ourselves, our posterity, and our neighbors that to which Nature and the laws of our country have given us by right—the liberty of both exposing and opposing power...by speaking and writing the truth!*

The jury set Zenger free. Hamilton was honored by local citizens who raised money to purchase a "Seal of Freedom" with which to award him. Zenger continued to print until his death in 1746. His wife then continued their work as did his son John Zenger, Jr.

In discussing suppression, have students offer other historical examples. Ask them to evaluate the instances described, noting what interests and values were promoted or undermined in each case. Would they have agreed with the government actions? For example, would they have voted for the Espionage Act of 1918 had they been in Congress? Note that many would argue that it is particularly at times when the government feels most threatened, that the right of free expression should be more vigilantly protected. Do your students agree?

C. Preparing for the Critical Thinking Exercise

Have students discuss the types of expression generally considered protected by the First Amendment. It is important to emphasize, however, that "it is possible to find some kernel of expression in every activity a person undertakes—for example walking down the street or meeting one's friends at a shopping mall—but such a kernel is not sufficient to bring the activity within the protection of the First Amendment." (*Dallas v. Stanglin*)

At the same time, however, "where government prohibits conduct precisely because of its communicative attributes... [the Court has ruled] that regulation unconstitutional." (*Barnes v. Glen Theater, Inc.*, 1991)

Note also that there have been a number of cases which have raised issues of symbolic speech such as the wearing of armbands in protest of government policy (*Tinker v. Des Moines School District*, 1969), a sleep-in on public property (*Clark v. Community for Creative Non-Violence*, 1984), and the public burning of an American flag (*Texas v. Johnson*, 1989). You may wish to assign students the task of researching these cases and presenting oral arguments to the class for discussion.

In the latter case, the majority of the closely divided Court wrote, "In deciding whether particular conduct possesses sufficient communicative elements to bring the First Amendment into play, we have asked whether an intent to convey a particularized message was present and [whether] the likelihood was great that the message would be understood by those who viewed it." Ask students whether they agree with this criteria.

Dissenters wrote that "far from being a case of 'one picture being worth a thousand words,' flag burning is the equivalent of an inarticulate grunt or roar....[The] Texas statute [against flag burning] deprived Johnson of only one rather inarticulate symbolic form of protest—a form of protest profoundly offensive to many—and left him a full panoply of other symbols and every conceivable form of verbal expression to express his deep disapproval of national policy."

You may wish to use these quotes to stimulate your students thinking prior to completing the critical thinking exercise. It should be noted, however, as stated in the *Johnson* case, that the First Amendment has been interpreted to give "the government generally...a freer hand in restricting expressive conduct than it has in restricting the written or spoken word."

D. Critical Thinking Exercise: Evaluating and Developing Positions on the Scope and Limits of Freedom of Expression

Have students work in small groups to evaluate the two positions presented in the exercise. As you travel between groups to facilitate the activity, you may wish to suggest some concrete examples for students to discuss, such as the following:

- white supremacists distributing leaflets expressing their beliefs outside a market in a black neighborhood
- Communists parodying the national anthem as it is sung at a baseball game
- anarchists advocating overthrow of the government at a Fourth of July picnic in a public park
- performance artists whose show in an a city auditorium contains obscenities
- the wearing of gang colors to a school sporting event
- the selling to adults of records and tapes of a rap group which encourages violence towards the police
- nude dancing in a club where only adults who pay a cover charge may enter
- chanting by anti-abortion activists outside an abortion clinic
- anti-semitic graffiti spray painted on public buses and subway cars

During class discussion, have students share the important interests and values which would be promoted or endangered by each position, as well as justifications of their own personal views. Once again, you

may wish to suggest some concrete examples, like those above, to elicit the views of your students and to encourage them to examine different sides of the issue. Can your class reach some type of consensus on the scope and limits of free expression? On which aspects do they agree or disagree with one another and why?

E. Reading and Discussion

Have students compare their views with positions taken by the Court. Be sure to note that other branches of the government also limit free expression. For example, state and federal legislatures have passed laws limiting the right to express oneself by defacing national symbols, such as the flag. Executive agencies, such as the FCC, has issued anti-obscenity regulations which have sometimes led to broadcasters censoring the content of their programs and, at other times, to punishing stations which broadcast programs using profanity, even though immediately prior to the broadcast, listeners were advised that the program contained language some might consider offensive. (*See FCC v. Pacifica Foundation*, 1978.)

As you discuss limiting the right of free expression, make a list of the reasons students suggest for such limitations. Examples might include public safety or promoting commonly accepted moral values such as patriotism, equality, or human dignity. Remind the class that it is perfectly all right to disagree with these limits, but that they should justify why they disagree. Do your students think any other interests and values should be considered? If so, which ones and why?

F. Critical Thinking Exercise: Taking and Defending Positions on an Issue of Freedom of Expression

As you are undoubtedly aware, incidents of hateful speech and action have been on the rise on campuses in recent years. They have included various types of expression such as graffiti, epithets, articles in student newspapers, and jokes told on campus radio stations. To introduce this exercise, you may wish to call on those students collecting clippings on this issue to update the class.

After students have completed the reading and discussed in small groups their answers to the first five questions posed, have small groups work cooperatively to develop a policy proposal. After each group has presented its policy to the class, have another class discussion. In what ways are the policy suggestions similar or dissimilar? Can students reach a consensus? If not, what are the main areas of disagreement and why?

G. Concluding the Lesson

To conclude the lesson, have students discuss their answers to the **Using the Lesson** questions. Alternatively, these can be assigned as written homework.

You then may wish to have students take another look at your school's rules and policies concerning freedom of expression. Discuss them in light of the important interests and fundamental values addressed in this lesson.

On the basis of what your students have learned and the opinions they have developed, would they suggest revising your school's rules and policies concerning the scope and limits of free expression? After discussing their ideas and possible suggestions for change, they may wish to present them to the school community for further consideration.

Optional Reinforcement and Enrichment

1. **Liberty Limericks.** Have students write limericks or poems, like this one by abolitionist poet James Russell Lowell, about the relationship between freedom of thought and expression. They can share their compositions at a class or assembly poetry reading.

   And I honor the man who is willing to sink
   Half his present repute for the freedom to think.
   And when he has thought, be his cause strong or weak,
   Will risk t'other half for the freedom to speak.

2. **Free Expression Forum.** Have students sponsor a school forum on the importance of the right to artistic expression in a free society. They may wish to invite local authors, artists, musicians, poets, film makers, and actors to participate. Topics to discuss might include censorship, government restrictions on artists who receive federal funds, rating of movies, videos, and other forms of art, obscenity laws, and recent court cases concerning limits on expression. Students and guests should be encouraged to share not only their thoughts, but their own works.

3. **School Library Censorship Forum.** Should school libraries carry books with four-letter words in them, or ideas and language offensive to certain groups, even if the books have educational value? Have students research the issue of censorship in public school libraries. A panel of visitors such as school board members, attorneys, and librarians should be invited to discuss the topic and local policy concerning it with the class.

   To begin their research, students should ask your school librarian for the list of books banned in the past decade in school districts across the country, complied by the American Library Association. It includes the following: *Young and Black in America* (Rae Alexander), *American Heritage Dictionary*, *I Know Why a Caged Bird Sings* (Maya Angelou), *The Martian Chronicles* (Ray Bradbury), *Diary of Ann Frank*, *Steppenwolf* (Herman Hesse), *A Doll's House* (Henrik Ibsen), *The Wizard of Oz* (Frank Baum), *Grapes of Wrath* (John Steinbeck), *The Adventures of Huckleberry Finn* (Mark Twain), *Of Time and River* (Thomas Wolfe), *Catcher in the Rye* (J.D. Salinger), *Cat's Cradle* (Kurt Vonnegut), and *Grimms' Fairytales* (Brothers Grimm).

4. **Case Studies.** Assign students the task of researching the following landmark scope and limits cases and present what they have learned to the rest of the class through various techniques such as written reports, oral argument presentations, dramatic reenactments, or talk show simulations. • *Schenck v. U.S.* (1919) • *Whitney v. California* (1927) • *Gitlow v. New York* (1925) • *Chaplinsky v. New Hampshire* (1942) • *Dennis v. U.S.* (1951) • *Roth v. U.S.* (1957) • *Miller v. California* (1973) • *FCC v. Pacific Foundation* (1978) • *U.S. v. O'Brien* (1968) • *Barnes v. Glen Theater, Inc.* (1991)

Planning Ahead

In the next lesson, students will be conducting a moot court. You may wish to invite professionals familiar with First Amendment issues to participate as judges and assist in discussion of the case with your class following the activity. Suggested guests include attorneys, judges, members of civil liberties organizations, or journalists.

Lesson 22

How Does the First Amendment Protect Your Freedom of Assembly, Petition, and Association?

Lesson Overview

This lesson continues the discussion of the right to freedom of expression. It deals with the rights of assembly and petition. Also included in this lesson is the right of association, which is not mentioned in the Constitution but has been recognized as a basic right. Students will examine the significance of the rights of assembly and petition and their importance to the Founders. They will also learn how the Supreme Court has recognized the right of association. Students will consider what limitations the courts have placed on these rights and the issues raised by such limitations. Finally, students will examine a recent case which involves the most of the First Amendment rights they have been studying in this unit—religion, speech, and association.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the importance of the rights of assembly, petition, and association
2. describe the historical background of these rights and their importance to the Founders
3. explain the issues involved in placing limits on these rights
4. take, defend, and evaluate positions on standards to use in limiting freedom of assembly
5. take, defend, and evaluate positions on a contemporary case involving First Amendment rights

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Ask students to offer examples of times they have exercised these rights. Although some may never have assembled for the "redress of grievances" or formally petitioned for change, all will have exercised the right to associate—in teams, clubs, organizations, or just informally with friends. What benefits come to the community and to them as individuals because of these associations?

Next, ask your students what limits, if any, have been placed on their rights to associate, either formally through club membership rules, or informally by their parents, for example, who don't want them to associate with certain individuals or groups. Do they think the limits placed on their associating with others are fair? Why or why not? What are their initial views about the scope and limits of the rights to assemble, petition, and associate?

B. Reading and Discussion

Have students read about the historical importance of the rights of assembly and petition. Have students offer other historical examples of the exercise of these rights and the limitations placed on their exercise. Examples might be the union struggles, the Progressive cooperative movement, the blacklisting of writers and artists in the 1950s, and the harassment of civil rights leaders by the Justice Department in the 1960s and 1970s. Examples of possible discussion questions are the following:

1. How are these later historical examples similar or dissimilar to the experiences of the Founders?
2. Given the Founders' motivation in drafting the First Amendment, might they have approved or disapproved of the way the rights of assembly and petition were limited in later years?
3. How would your students justify or oppose the gag rule, arrest of the Coxey petitioners, and dispersement of the Bonus Army?
4. Do they agree or disagree with Dr. King's statement about the importance of these First Amendment protections?
5. What important interests, such as public safety, costs for cleaning up after a demonstration, or paying police to protect demonstrators, should be considered when determining the scope and limits of these rights?
6. What fundamental values, such as individual liberty and human dignity, should be considered when determining the scope and limits of these rights?

C. Critical Thinking Exercise: Developing Standards to Use in Limiting Freedom of Assembly

Have students work in groups to discuss each situation. A recorder should note the views of group members. After discussing their opinions about scope and limits, students should work together to develop a set of guidelines or considerations for making decisions in similar cases. Spokespersons should present these considerations for class discussion.

D. Reading and Discussion

Have students compare the Court's views and their own opinions about the scope and limits of these rights and the considerations which should be taken into account when making decisions concerning these issues. Once again, caution students that they need not consider the Court's opinions as necessarily the "right" answer.

As you work through the reading with your class, note that the freedom voluntarily to associate with others is essential, not only to promote political interests and counter the strength of centralized power, but also to achieve one's individual potential. Ask questions to lead your students to see that it is through

our personal and private associations—political parties, professional organizations, social clubs, families, labor unions, or religious organizations—that we create meaningful lives.

In discussing the right of association, have students discuss their answers to the questions posed in the text. Note that the Court has been asked not only questions concerning with whom one can associate, but also questions concerning whether someone can be forced to associate with particular individuals.

E. Critical Thinking Exercise: Taking and Defending a Position on a First Amendment Issue

The case examined in this exercise offers students a chance to consider a number of First Amendment rights in a school setting. After students have read the basic facts in the case, discuss their answers to the first four questions as a whole class. Or have students work individually, writing down their answers in their program journals. Then divide the class into the three groups, as suggested in the student book. If students have worked independently to answer the questions, have them bring their journals to the group meetings for reference. Travel between groups as they prepare for the moot court. If a visiting professional is assisting, he or she can work with one team while you work with the other.

Encourage each team of counsels to anticipate the arguments their opponents are likely to make in order to develop their best offensive. They should prepare an initial three-to-five minute presentation. After preparing their arguments, each member of the legal team should be given a special assignment to encourage participation by all students. Counsel spokespersons should be chosen to make the initial presentations. A second group of students on the team should be prepared to respond to questions by the judges. A third group of students on the team should be chosen to rebut the arguments of their opponents.

Meanwhile, judges should work together to prepare questions to ask each side. In an actual appellate court, judges may interrupt oral arguments at any time with questions. If you wish to simplify the activity, allow students to complete their presentations before being questioned by the judges. After questioning both teams, judges should allow each group of advocates two minutes to rebut the arguments made by their opponents. The judges should then deliberate and issue their opinions.

A variety of opinions can be issued: unanimous, majority, concurring (agreeing with the outcome other judges reached but for different reasons), minority, and individual dissents. In each case, judges should justify their reasoning, explaining what criteria they used to reach their decision. While the judges deliberate, other students should work individually to write down their own personal opinions in the case, irrespective of the role they were assigned during moot court.

Reconvene the class and have the judges issue their opinions. Then discuss the case, allowing other students to explain what conclusions they reached. To facilitate discussion, you may wish to ask students whether or not they agree with the following statements and opinions from the actual case:

- Counsel for the school argued that allowing access to a religious club violated the establishment clause. If Westside recognized the Christian Club, it would appear to be endorsing that religion over others.
- Mergens's counsel argued that equal access is not the same as endorsement. A Jewish Club or Hindu Club could also have been formed if there was student interest and they would not have violated the First Amendment.
- *We think that secondary school students are mature enough and are likely to understand that a school does not endorse or support speech that it merely permits on a non-discriminatory basis....The proposition that schools do not endorse everything they fail to censor is not*

complicated....The broad spectrum of officially recognized student clubs at Westside and the fact that Westside students are free to initiate and organize additional student clubs counteract any possible message of official endorsement of preference for religion or a particular belief.

Majority opinion by Justice O'Connor

- *Can Congress really have intended to issue an order to every public high school in the nation stating, in substance, that if you sponsor a chess club, a scuba diving club, or a French club—without formal classes in those subjects—you must also open the doors to every religious, political or social organization, no matter how controversial or distasteful its views may be? I think not.*

  Dissenting opinion by Justice Stevens

By a vote of 8-1, the Court ruled that if public secondary schools allow any noncurriculum-related group to meet after school on the premises, then all such groups must be granted similar access.

F. Concluding the Lesson

Conclude the lesson by discussing the **Using the Lesson** questions. Then ask students who have been collecting clippings on freedom of expression, assembly, association, and petition issues to make presentations to the class. What national, state, and local issues concerning these right have been in the news? What is your school policy concerning issues like those raised in this lesson?

Finally, ask students to express what the First Amendment means to them personally. Do they agree with those who believe it contains our most important rights? What are the most important things that they have learned in this unit about their rights and responsibilities? (This might be the subject of a homework essay.)

Optional Reinforcement and Enrichment Activities

1. **Blacklist Hearings**. Have students research the Hollywood Ten or other groups who have been blacklisted and discriminated against on the basis of association. Have students stage a simulated congressional hearing, based on the McCarthy hearings, to dramatize the constitutional questions at issue.
2. **Express Yourself**. Have students select a medium of their choice—music, art, drama, writing, or film—by which to express their views about the importance and interrelationship of First Amendment rights in a free society. Have them share their ideas and feelings at the Learning Center, an assembly, or open house.

Student Unit Review

You may wish to reproduce the following **Student Unit Review** for your students. The entire review may be used as a unit test, or you may choose to assign sections for homework or as a classroom study guide to help students review the unit. For Unit Four, Section B, the **TRUE** statements are numbers 3, 5, and 6.

STUDENT UNIT FOUR REVIEW

A. Use each of the following terms in a sentence to show you know its meaning.

- establishment clause
- free exercise clause
- time, place, and manner restrictions
- clear and present danger
- redress of grievances

B. Identify each true statement and correct each false statement.

1. When the First Amendment became part of the Constitution, it marked the end of preferential treatment for any one religion by the federal and state governments.
2. The Supreme Court has generally interpreted the free exercise clause to prohibit the federal government from providing any support for religion whatsoever.
3. The right of an individual to exercise his or her religious beliefs can only be limited if the practice presents a clear danger to others.
4. Students cannot refuse to salute the flag or sing the national anthem, even if it is against their personal religious or ethical beliefs.
5. There are times when First Amendment rights come into conflict with other rights, such as the right to a free press and the right to a fair trial.
6. Historically the rights of petition and assembly have been especially important for groups excluded from the political process such as blacks and women.
7. The First Amendment prohibits private individuals from interfering with your freedom of speech.

C. Write a short essay to answer two of the following questions:

1. Justice Brandeis wrote, "Freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of truth." What is the relationship between freedom of conscience and freedom of expression? Are these protections essential in a free society?
2. What arguments can be made for or against the position that the criteria for allowing an act of free expression should be whether it benefits the common welfare and promotes the overall goals and values of the society?
3. What might de Tocqueville have meant when he wrote that the exercise of the right of association was one of the outstanding characteristics of American society?

D. What do you think? Express and justify your opinion about one of the following questions:

1. In your opinion, what individual responsibilities are implied by the rights protected by the First Amendment?
2. Describe how each of your First Amendment rights might help you achieve your own personal goals and promote the type of society in which you would like to live.

© Center for Civic Education
Limited reproduction rights granted for school use only.
With Liberty and Justice for All

Unit Five

What Rights Are Protected by Procedural Due Process of Law?

Unit Overview

Students were introduced to due process in Unit Three and learned of the distinction between substantive and procedural due process. This unit will examine the procedural due process rights included in the Fourth, Fifth, Sixth, and Eighth Amendments. Students will learn how due process protects people from unfair actions by members of the government, particularly by law enforcement officials and courts. They will study the history and purposes of these protections and examine some issues involving their application and interpretation. Students will also consider the limitations placed on procedural due process rights and see how the courts have tried to balance individual rights against the interests and welfare of society. A number of the issues presented in this unit, such as the right against self-incrimination and the use of the death penalty, are controversial. Students will study the arguments on both sides of these issues and then be asked to decide which position they would support.

Unit Objectives

At the conclusion of this unit, students should be able to

1. explain the importance of procedural due process
2. identify violations of procedural due process
3. explain the history, purposes, and importance of each of the procedural rights studied in the unit
4. explain problems that arise in the enforcement of the Fourth Amendment
5. explain the arguments for and against the exclusionary rule
6. take, defend, and evaluate positions on issues involving the procedural rights studied
7. take, defend, and evaluate positions on the constitutionality of the death penalty

Unit Introduction

Have students read the **Purpose of Unit** section. Highlight the unit themes. You may wish to have a students write them on the chalkboard for reference during lesson sessions. They are as follows:

- Substantive due process limits the degree to which government may interfere with an individual's rights to life, liberty, and property.

- Procedural due process, on the other hand, requires government to follow certain fair procedures when interfering with an individual's rights to life, liberty, and property.
- Procedural due process rights are protected both in the body of the Constitution (see Unit Two) and in the Bill of Rights.
- All branches and agencies of government are limited by due process, not just law enforcement agencies and the courts.

Then have students examine the unit **Timeline**. Unit docents may wish to research additional events of significance concerning due process rights. Have students write the name and date of these events and a few sentences describing their significance on 3 x 5 cards. The cards should be displayed around the classroom walls or on a bulletin board for reference. In addition to significant people and events, the timeline might also include relevant Supreme Court cases. These cases could also be presented by unit docents to the rest of the class through simulated appellate arguments.

Planning Ahead

Unit docents should be prepared to update the class about current due process issues, based on the clippings they have been collecting. You will note that a large number of key procedural due process cases have come before the Supreme Court recently. Many of these decisions set greater limits on the due process rights of individuals and reverse the decisions made by the Warren Court during the 1960s. In part this is due to changes on the Supreme Court and in part reflects the public concern about crime and demands for reform of the criminal justice system. To help you and your class stay abreast of these latest changes in constitutional interpretation, you may wish to arrange for a local attorney or judge to visit your class upon completion of this unit. You also may wish to have a member of your congressional representative's staff or a local journalist update your class on federal crime legislation and other laws which would have an impact on due process rights.

You may also wish to have your school rules and guidelines concerning due process issues available for reference. This would include search and disciplinary hearing procedures and the types and nature of punishments.

In Lesson 23, students will be discussing a situation based on an actual appellate case, *Ex parte Clarence Lee Brandley, Applicant*, Texas Court of Criminal Appeals (781 S.W. 2d., December 1989). You may wish to obtain a copy of that case for reference.

Lesson 23

What Is the Importance of Procedural Due Process?

Lesson Overview

The purpose of this lesson is to help students understand the importance of the protections provided by procedural due process. Students will learn why the Founders believed procedural due process was essential to protect the rule of law and constitutional government. Students begin the lesson by considering a recent court case that reveals what can happen when due process rights are not respected. They will be asked to look at the violations of rights that occurred and think about what protections can prevent such injustices. This exercise allows students to identify the key due process rights protected by the Fourth, Fifth, Sixth, and Eighth Amendments and lays the foundation for examining these rights in the remaining lessons of the unit.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the history and importance of procedural due process
2. identify violations of due process rights in a particular case

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

You may wish to begin study of this unit by asking students what is fair or unfair about the following situations. If the situations are unfair, what would they do to make them more fair? Taken as a whole, in what ways are the issues raised in each situation illustrative of the definition of procedural due process given in the unit introduction?

- A student is accused of smoking in the rest room and suspended without a hearing.
- The city council publicizes notice of a hearing to discuss a proposed recycling policy.
- Prior to the Revolution, British soldiers were allowed to search colonists' homes at will.

- Congress passes a bill forbidding information gathered from individuals by one government agency from being used by another government agency without the individuals' permission.
- All first time drunk-driving offenders receive the same punishment set by state legislatures.

B. Reading and Discussion

Write the phrases "keystone of liberty" and "heart of the law" on the chalkboard. After students have read the introductory narrative, have them express why due process might have been described by these phrases. What words would they use to describe the concept of procedural justice?

Ask students to give examples of the violation of due process rights experienced by the Founders.

Ask students if their life, liberty, or property were threatened by the government, what rights would they most want to see protected? Have students jot down a list of these rights for later reference.

C. Critical Thinking Exercise: Identifying Violations of Due Process

Have students complete the reading and follow small group procedures as indicated in the student book. In sharing and comparing the answers of students to the questions posed in the exercise, note in particular question 3 in "Examining the Case." What might have happened to Smith had not other individuals taken the responsibility to pursue justice? What responsibility do your students think they have in terms of due process issues?

In discussing the second "What do you think?" question, you may wish to share some current information about moves to place further limits on the rights of *habeas corpus*, previously discussed in Lesson 6. In 1991 the Supreme Court placed limits on the number of federal *habeas corpus* petitions that can be filed by those convicted of criminal offenses. Petitioners can bring only one federal *habeas corpus* appeal unless they "can show that a fundamental miscarriage of justice would result from a failure to entertain the claim."

D. Reading and Discussion

Have students read the last narrative section. Stress the importance of procedural due process in protecting the rights of life, liberty, and property from abuse by the government.

Note that John Adams once argued that procedural due process rights were critical if citizens were to have the ability to protect themselves against "the Instruments of Arbitrary Power." In what way did the Smith case prove his point? Why do your students think violations of these rights continue despite the existence of our Constitution and Bill of Rights? Why do your students think these rights are so often misunderstood?

Have students give examples to illustrate the point Frederick Douglass was making. What reforms or changes do your students think need to be made in order for our society to realize more closely the ideals upon which due process is based?

Finally, be sure to emphasize once again that not all procedural due process issues concern criminal due process. You may wish unit docents who have collected clippings on noncriminal procedural due process issues to share them with the class at this time.

Explain to your students, however, that because criminal due process issues concern times when citizens are most vulnerable to government power, the Founders were particularly concerned with protecting citizens who find themselves accused of wrongdoing. These rights will be the focus of this unit of study.

E. Concluding the Lesson

To conclude the lesson, have students discuss their answers to the **Using the Lesson** questions or assign them as written homework. Then have students consider the following statement by Daniel Webster (1782-1852):

> *Due process is that procedure which hears before it condemns, proceeds upon inquiry, and renders judgement only after trial.*

How does Webster's definition compare with the list of rights students made at the start of the lesson? How does it compare with the rights Smith was denied? You may wish students to write down their responses in a homework essay.

Optional Reinforcement and Enrichment Activities

1. **Personal Journal Entry.** Have students describe a situation which raises a question of procedural due process effecting young people. For example, it might be a story about students who were dismissed without a hearing from a school sports team because they reportedly had been seen drinking at a party, thus breaking the sport team contract they had signed which prohibited smoking and drinking by team players.
2. **Noncriminal Justice Short Story.** Have students write short stories concerning situations which raise noncriminal procedural due process issues. For example, a local zoning battle, a secret government meeting to make decisions about the use of public lands, or a mad dictator who plans to subvert procedural due process in order to take over the country.
3. ***Habeas Corpus* Debate.** Have students research current rulings and legislation concerning *habeas corpus*. Have them then debate whether or not these rights should be limited further. You may wish an attorney, congressional staff person, or journalist to participate by judging the debate and discussing the issue with your class afterwards.

Lesson 24

How Does the Fourth Amendment Protect You from Unreasonable Searches and Seizures?

Lesson Overview

The Fourth Amendment protects against unreasonable searches and seizures. It has also been interpreted to protect the right to privacy. Students will examine the purposes and importance of the Fourth Amendment as well as the historical reasons for its passage. They will then consider the issues involved in enforcing the Fourth Amendment. Students will have the opportunity to look at different approaches that have been suggested to insure that law enforcement officials do not abuse their powers. Finally, students will examine some of the controversies that have arisen over the exclusionary rule and consider the arguments both for and against its use. At the end of the lesson, a research exercise is suggested which would allow students, if desired, to interview community members, lawyers, and judges about their views on enforcing the Fourth Amendment.

Lesson Objectives

At the conclusion of the lesson, students should be able to

1. explain the purposes and importance of the Fourth Amendment
2. describe the historical background of the protection against unreasonable searches and seizures
3. explain controversies that arise in the interpretation and application of the Fourth Amendment
4. take, defend, and evaluate positions on alternative means of enforcing the Fourth Amendment
5. explain the arguments for and against the exclusionary rule

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Once again reiterate that Fourth Amendment rights do not protect only those suspected of wrongdoing, but all citizens, by limiting the power of government.

B. Reading and Discussion

After students have completed the narrative sections which precede the **Critical Thinking Exercise**, discuss the text. Ask students to describe how a right to privacy might be implied from the Fourth Amendment. Discuss what other rights, values, and interests are protected by this amendment.

Have students examine more closely Justice Robert Jackson's statement about the importance of the Fourth Amendment. Ask them to paraphrase it and state whether or not they agree. Ask them to consider the broader interpretation given the Fourth Amendment in the second half of the twentieth century. Do they feel this broader interpretation is justified? What particular Fourth Amendment problems might occur today in a world quite technologically different from the eighteenth century?

Note that Congress in 1974 passed the Privacy Act because of public concern over privacy issues in the Information Age. This act gives citizens access to most of their government files and limits the use of confidential information by government agencies which had not initially collected the information.

In discussing the historical and philosophical background of the Fourth Amendment, ask students how writs of assistance might enable government to threaten the natural rights of life, liberty, and property. Note that such writs were often used in England to prosecute and intimidate members of the opposition and religious dissenters. In this way, how are Fourth Amendment protections related to freedom of belief, expression, and association protected by the First Amendment?

In discussing issues concerning warrants and probable cause, ask students whether or not they agree with the application and limitation of this right as described in the text. You may wish to refer to a number of recent Supreme Court decisions, such as the following, as well as asking unit docents to update the class concerning these and related issues:

- *Colorado v. Rister* (1990). The majority upheld the right of police officers to stop and search selected motorists without warrants at a roadblock intended to catch drunk drivers. Sobriety checkpoints have generally been considered constitutional as long as the intrusions on drivers is kept to a minimum. Dissenters maintained, however, that citizens have a right to expect a certain amount of privacy in their cars unless specifically suspected of breaking the law. This was particularly true in this case, three justices said, because the Colorado state constitution specifically protects the "right to be left alone."
- *Florida v. Jimeno* (1991). The majority ruled that the police can search an open container in a car without a warrant if the container is large enough to hold an object and the driver has already given the police his or her general consent to search. Two justices dissented stating that there is a different expectation of privacy attached to cars as opposed to closed containers, like bags or suitcases, which are in effect one's "home away from home." Therefore it follows that "an individual's consent to a search of the interior of his car cannot necessarily be understood as extending to containers in the car."

C. Critical Thinking Exercise: Examining Alternative Means of Enforcing the Fourth Amendment

Read the first section of this exercise as an entire class. Ask students under what circumstances they think law enforcement officials should be allowed to do each of the actions listed in the opening section. What might happen if these powers were not limited?

After this general discussion, continue to work as an entire class or divide the class into groups. You may wish to assign each group one of the policies to examine in detail. Have students make a list of the

strengths and weaknesses of each policy. Have groups share their lists with the rest of the class and discuss their answers to the questions posed in the exercise. Can they reach a consensus about which policy or policies they would support?

D. Reading and Discussion

Have students read about the exclusionary rule. You may wish to divide the class into two groups for general discussion purposes. Half the groups will support the exclusionary rule and the other half will oppose it. You may wish to hold an impromptu debate on this issue or simulate congressional testimony concerning the exclusionary rule. Afterwards, have students express their own personal views.

E. Research Exercise

You may wish to have students complete the research exercise suggested in the text. Note that although the Supreme Court created the exclusionary rule, Congress has since debated it and included modifications of it in various criminal justice bills, such as the Law Enforcement Assistance Act of 1988. The executive branch has also taken positions on the exclusionary rule. Students may wish to contact their congressional representative's office for recent bills and debate concerning this issue. They also may wish to write to the president requesting the current administration's position.

F. Concluding the Lesson

Conclude the lesson by asking students who have been collecting clippings on Fourth Amendment issues to update the class, if you have not already done so. What national, state, and local issues concerning these rights have been in the news? What is your school policy concerning search and seizure issues like those raised in the case of *New Jersey v. T.L.O.* (1985), in which the Court ruled that public school searches must not violate the Fourth Amendment, but may be conducted without a warrant. Reasonable suspicion that a rule has been broken, the majority ruled, is enough reason to justify a search. Do your students agree with this decision? Finally consider the **Using the Lesson** questions or assign them as written homework.

Optional Enrichment and Reinforcement Activities

1. **Exclusionary Editorial.** Have students write editorials based on the following statements made during oral arguments in *Stone v. Powell* (1976) expressing their opinions about what the "real question" is:

   Do you believe that a murderer going scott-free is the right price to pay for a mistake by a magistrate?
   Question of Chief Justice Warren Burger

   The real question is whether a man is to be imprisoned if his trial was lacking in constitutional fairness.
   Counsel replied to Burger's question

2. **Fourth Amendment Improvs.** Have students perform improvisations to raise Fourth Amendment issues with the class. After dramatizing events, such as those suggested above, have them discuss what the scope and limits of the Fourth Amendment should be in each case.
3. **Additional hypotheticals for discussion.** To further extend the lesson, you may wish students to consider the following hypotheticals based on actual incidents. Have students take and defend positions on whether or not they think the Fourth Amendment has been violated:

   - Tom Alvin was suspected of being an armed and dangerous drug dealer. The entrance to his apartment was by a very narrow staircase over which video cameras were installed. Police officers armed with a search warrant decided it was too dangerous to enter the apartment by normal means. Therefore, they placed ladders against the side of the building, climbed up to Alvin's apartment, smashed in the windows, entered, searched for, and seized cocaine.
   - A consumer organization is lobbying Congress to pass a law to prohibit the selling of a phone gadget which reveals the caller's phone number. They claim that using the product is an unlawful invasion of privacy.
   - Lucy Briggs was laid off her job as a flight attendant as the result of testing positive for drug use. The test was part of a new company policy requiring all airline employees to undergo surprise drug tests. Lucy claims that the mandatory urine test violates the "right of the people to be secure in their persons."
   - Students and their families have angrily protested a school district policy allowing public schools to sell the names, addresses, and phone numbers of graduating seniors to military recruiters. They claim that confidential, private information collected for one purpose is being seized and sold illegally to be used for other purposes.
   - The FBI searched library records to discover persons borrowing scientific and technical manuals which might be used for counterintelligence. As a result of the investigation, a man was charged with espionage. He claims the search was illegal.
   - Acting quickly before a murder suspect could wash his hands, the police seized him and took skin scrapings from beneath his fingernails. They say the warrantless search was legal because there was no time to get a warrant before the suspect destroyed the evidence.
   - A student completed certain forms to apply for a government college loan. The confidential, personal information was stored on a computer network. It was later accessed by a different government agency and used without the student's knowledge or permission as part of a survey on college-age Americans.
   - Passengers are protesting the police boarding trains and buses to conduct random searches of luggage compartments as part of the war on drugs. Law enforcement officers maintain that there is no difference between their conducting such searches and airline officials searching luggage and using metal detectors at passenger check-in areas to look for weapons and explosives.

Planning Ahead

You may wish students to read the first three sections of text in Lesson 25 and be prepared to discuss them in class. One of the landmark cases noted in this lesson is *Miranda v. Arizona* (1966). You may wish selected students to present the arguments made in this case to the class.

Lesson 25

How Does the Fifth Amendment Protect You Against Self-Incrimination?

Lesson Overview

The Fifth Amendment provides several important protections for the rights of individuals. This lesson will focus on the clause which protects people from being forced to testify against themselves before courts of law, legislative committees, or other government agencies. This is perhaps the most controversial of all the rights in the Constitution and Bill of Rights.

Students will examine the history and the purposes of the protection against self-incrimination. They will look at two cases, one from 1791 and the other from 1991, and analyze the Fifth Amendment issues raised by these cases. They will then consider the limitations that have been placed on the right against self-incrimination and look at some recent Supreme Court decisions involving its use. Students should understand that the debate over the protection against self-incrimination involves the struggle to find a balance between individual rights and the need to protect society.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the purposes, history, and importance of the protection against self-incrimination
2. explain common limitations placed on the right against self-incrimination
3. explain how the right against self-incrimination is enforced
4. take, defend, and evaluate positions on the issues raised by the right against self-incrimination

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Note that this lesson will focus on one of the five provisions of the Fifth Amendment. You may wish, however, to introduce students briefly to the other rights it protects. The Fifth Amendment prohibits:

- indictments for capital crimes without approval by citizens in the form of a grand jury

- being tried twice for the same crime (double jeopardy)
- loss of life, liberty, or property without due process of law
- government confiscation of property without just compensation

B. Reading and Discussion

Have students read the three narrative sections which proceed the **Critical Thinking Exercise**. Be sure they understand the purposes of the right and the historical abuses of government power it is designed to prevent. Conclude by discussing the reasons for and purposes of the Miranda warnings. (For a more detailed discussion of this case, see the optional activities that conclude this lesson.

C. Critical Thinking Exercise: Examining Issues of Self-Incrimination

Follow the case study procedure as outlined in the student book. You may wish students to spend the rest of the class period preparing their cases to be presented at the next scheduled class. Judges should spend the time making a list of questions to ask both sides. To simplify the activity, you may wish each legal team to make its presentation before judges begin their questioning. Spokespersons from each legal team should make the initial two-minute presentations, but other team members should take the responsibility to respond during the question-and-answer period.

After oral arguments, the judges should deliberate and then issue their majority, minority, and/or concurring opinions or dissents. While the judges are deliberating, individual students should note in their program journals how they would have decided each case. During discussion, students should compare their opinions and the reasoning behind them, using the questions provided to guide discussion.

D. Reading and Discussion

Have students read the next three narrative sections and compare their ideas about the right against self-incrimination with the interpretations of the legislatures and the courts. Have students consider each example and decide whether or not they agree with that particular interpretation and why. What important interests and values appear to underlie these different interpretations? Do students agree that the *Fulminante* decision which greatly reduced the protection against self-incrimination? Do they agree with the judge's statement in the *Dillon* case? How does it compare with the Supreme Court's decision in the *Fulminante* case?

E. Concluding the Lesson

Have students read the concluding narrative. In what way does the controversy over the self-incrimination clause reflect the continuing tensions between the classical republican emphasis on the common welfare and the natural rights emphasis on the primacy of individual rights?

After considering the **Using the Lesson** questions, you may wish students who have been collecting clippings on Fifth Amendment issues to update the class. Recent questions concerning the right against self-incrimination include the following:

- Should parents accused of child abuse be protected from having to bring their child to testify in court?
- Should police be required to inform drunk driving suspects of their constitutional rights before videotaping their answers to routine questions and their performance on roadside sobriety tests?
- Must an IRS agent inform a citizen of his or her right to remain silent before questioning the person about an alleged falsified tax return?

Return to the statement made by Justice William O. Douglas at the end of the lesson narrative. What point was the justice making? Do your students agree or disagree? You may wish them to write their opinions in their program journals.

Optional Reinforcement and Enrichment Activities

1. **Television Commentary**. Have students write and possibly videotape a television commentary in which they state whether or not they agree with Justice White's dissent in the *Fulminante* case. White said that a majority of the Court, without any justification, dislodged one of the fundamental tenets of our criminal justice system.
2. **Congressional Hearings Simulation**. Have students research the McCarthy, Watergate, or Iran-Contra hearings in terms of the self-incrimination clause of the Fifth Amendment. Students should dramatize scenes from these hearings, highlighting Fifth Amendment issues. Afterwards, have them discuss the right against self-incrimination and other rights which may be related, such as First Amendment liberties.
3. **Just Compensation Cartoon**. Have students create political cartoons or a comic series concerning the following incident: Should the federal government have to pay a farmer the fair market value of his land because a military air base was built next door and the planes disrupted his hens' laying cycles?
4. **Examining the Miranda case**. You may wish to give your students some further information about this case. In March 1964 Ernesto Miranda was arrested and questioned at the police station. He was not told that he had a right to counsel. After two hours of questioning, he confessed. He was convicted of kidnapping and sexual assault and appealed his case. The Supreme Court overturned his conviction in a five-to-four decision that is still controversial today.

   The majority opinion set out a series of procedures designed to inform "accused persons of their right of silence, and in assuring a continuous opportunity to exercise it." The decision listed safeguards which must be observed:

   1. Persons in custody must be told of their right to remain silent and government officials must make sure suspects understand what this right means.
   2. Suspects must be informed that anything they say may be used against them in court.
   3. Suspects must be told they have the right to counsel during questioning, regardless of their ability to pay.
   4. If at any point during the interrogation, suspects wish to exercise their right to remain silent, questioning must stop.
   5. Any statement taken in violation of these guidelines cannot be used as evidence in court.

The majority opinion also noted that suspects can waive or give up these rights, and that they only apply during questioning while in police custody, rather than at the scene of the crime. Also, if a person voluntarily turns himself or herself in to the police and confesses, these guidelines do not apply. Voluntary statements are not barred by the Fifth Amendment.

Dissenters argued that the Court should look at these specific safeguards on a case-by-case basis, considering "the totality of the circumstances." Justice White wrote that there was no indication that the authors of the Fifth Amendment intended to protect suspects to the degree required by the majority opinion.He argued that the decision flew "in the face of community values" and the important interests of government to maintain law and order and protect the society from crime.

Justice Harlan argued that the rules laid down by the Court would "impair, if...not eventually serve wholly to frustrate, an entire instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it. There can be little doubt that the Court's new code would markedly decrease the number of confessions."

Planning Ahead

In the next lesson, three landmark Supreme Court cases are mentioned: *Gideon v. Wainwright* (1963), *Miranda v. Arizona* (1966), and *In re John Demos, Jr.* (1991). You may wish to have selected students make presentations on these cases before the entire class.

You also may wish students to conduct a debate based on the issues raised in the final **Critical Thinking Exercise** in the lesson. If so, you may wish to invite outside professionals to participate as judges and help debrief the activity afterwards.

Lesson 26

How Does the Sixth Amendment Protect Your Right to a Fair Trial?

Lesson Overview

The Sixth Amendment contains a number of procedural due process rights to insure that a person receives a fair trial. Students will briefly review the history and importance of each of these rights. They will then focus on the right to counsel and its role in the American judicial system. Students will consider the current interpretation of the right to counsel and examine controversies that have arisen over its application. They will complete a critical thinking exercise that asks them whether they think procedural due process rights should be weighed in favor of the defendant or the government.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. explain the rights protected by the Sixth Amendment
2. describe the history of these rights and their importance
3. explain the values and interests protected by the right to counsel and current issues involving this right
4. take, defend, and evaluate positions on issues raised by the right to counsel

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

B. Preparing for the Critical Thinking Exercise

Have students read the introductory narrative which includes the Sixth Amendment. You may wish them to paraphrases its clauses before proceeding to analyzing them.

C. Critical Thinking Exercise: Examining the Procedural Rights of the Sixth Amendment

Follow the instructions given in the student book for this group exercise. The entire class should read about all eight provisions, but each group should be assigned one right. After spokespersons have presented each group's answers to the questions, have students compare the provisions. Taken as a whole, why would they be an important means for (a) limiting government power, (b) preserving individual rights, and (c) promoting a just society?

D. Reading and Discussion

Have students complete the next three narrative sections. To discuss them, you may wish to ask questions such as the following:

- Upon what ideas of the classical republicans and natural rights philosophers are these rights based?
- What historical traditions laid the foundation for the Sixth Amendment?
- What grievances listed in the Declaration of Independence (see **Appendix**) illustrate violations of these rights?
- What procedural rights are protected directly in the body of the Constitution? In what ways are they related to the rights protected in the Sixth Amendment?
- Why do you think the Sixth Amendment was included in the Bill of Rights?
- How do adversarial and inquisitorial systems of criminal justice differ? Which do you think would be more just to those accused of criminal acts by their government?
- What do Justice Sutherland's views about the need for legal representation imply about who should be guaranteed the right of counsel?
- In your opinion, should the right to counsel be unlimited? If not, what limits should be placed on this right? What interests and values underlie your position?
- How did the limits placed on the right to counsel in the past impede justice? What other interests and values would have been threatened as well?
- What might be the differences between a justice system in which people have the right to counsel if they can afford it and a system in which all people can have legal representation regardless of ability to pay? What interests and values would be promoted or undermined by each system?

Finally, you may wish to give students further information concerning *Gideon v. Wainwright*. Before his trial in a Florida court for breaking and entering a poolroom, Clarence Earl Gideon, an indigent who had spent most of his adult life in prison, asked the judge to appoint a lawyer in his defense. "The United States Supreme Court," he inaccurately but prophetically said, "says I am entitled to be represented by counsel."

The Florida court rejected this claim which was appealed to the Supreme Court. Justice Black in the majority decision declared the Sixth Amendment right to counsel a "fundamental right" that all states were obliged to guarantee.

E. Critical Thinking Exercise: Examining Current Controversies over the Right to Counsel

You may wish to have study partners discuss the issues and questions presented in this exercise. Alternately, divide the class into small groups, assigning each group one of the questions to analyze. After students have had a chance to develop their positions on the issues raised, conduct a general class discussion.

In sharing and comparing their views, have students note competing interests and values which would be promoted or undermined by the different positions presented in the exercise.

F. Reading and Discussion

You may wish students who have been collecting clippings on Sixth Amendment issues to update the class about current concerns about the right to counsel. Have students compare their views with recent Supreme Court decisions, asking questions such as the following to stimulate discussion:

- Who should receive legal counsel? Under what circumstances?
- How would you define "effective representation"?
- How would you define "frivolous or malicious" requests for government-paid appeals?
- Do you think that the right to counsel should be limited as in *In re John Demos, Jr.*?
- What interests, such as court costs and efficiency, are at stake?
- What values, such as equality, fairness, and human dignity, would be promoted or undermined by further limiting the right to counsel?
- What guidelines or criteria would you use to decide such issues?
- What Fourteenth Amendment as well as Sixth Amendment issues are raised by these recent Court decisions?
- Do you think the way Sixth Amendment rights are currently enforced is sufficient? If not, what changes would you make and why?

In discussing *In re Demos*, you may wish to share the following quotations from the majority and minority opinions:

> *Petitioner's method of seeking relief here—filing three petitions...could only be calculated to disrupt the orderly consideration of cases. Petitioner has abused the system [of pauper appeals paid by the public]....If petitioner wishes to have...these petitions considered on the merits, he must pay the docketing fee.*
>
> Majority decision

> *[We] continue to oppose this Court's unseemly practice of banning [pauper petitions]...by indigent litigants....In closing the doors today on another indigent litigant, the Court moves ever closer to the day when it leaves an indigent litigant with a meritorious claim out in the cold. And with each barrier that it places in the way of indigent litigants, and with each instance it castigates such litigants for having "abused the system"...the Court can only reinforce in the hearts and minds of our society's less fortunate members the unsettling message that their pleas are not welcome here.*
>
> Justice Marshall, with Justice Blackmun and Justice Stevens, dissenting

G. Critical Thinking Exercise: Taking and Defending a Position on the Right to Counsel

You may wish to conduct this exercise in the form of a class debate. After students have worked in small groups to discuss the three questions, divide the class into two debate teams. (You may wish to invite outside guess to participate as judges or assign selected students this role). The debate should focus on the following question: Is our system weighted incorrectly in favor of the protecting the innocent rather than convicting the guilty?

Each team should make a five-minute presentation. Allow two additional minutes to rebut the arguments made by the opposing team. Afterwards, discuss the values and interests upon which each team's position was based. During debriefing, allow students to express their own views and concerns, regardless of the position they were assigned during the debate.

H. Concluding the Lesson

Conclude the lesson by asking students who have been collecting clippings on Sixth Amendment issues to update the class. What national, state, and local issues concerning this amendment have been in the news?

You may wish to note that the right to counsel is not the only clause of the Sixth Amendment under scrutiny in recent years. Public demands to streamline the justice system have led legislators to look into placing further limitations on the application of these rights. You may wish to ask your students:

- What responsibilities, if any, do you have to see to it that Sixth Amendment rights are protected?
- What influence can you have on public policy concerning the criminal justice system?
- Do you agree with Justice Oliver Wendell Holmes, Jr., that "it is less evil that some criminals should escape [punishment] than that the government play an ignoble part [in punishing] the innocent"?

Finally consider the **Using the Lesson** questions or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Dear Sir Blackstone**. Have students write a letter to William Blackstone stating whether or not they agree with his views about criminal due process. In their opinion, is our criminal justice system based on this view? Should it be?
2. **Procedural Due Process Posters**. Have students create posters to publicize the importance of procedural due process to a free society.
3. **Right to Counsel Arguments**. Have students reenact oral arguments in the case of *In re John Demos, Jr.* After performing for the class, have students write one-page opinions justifying how they would have decided the case.
4. **Book or Film Review**. Have students read *Gideon's Trumpet* or view the video of this famous film. Afterwards, have them write a review or design a movie poster which highlights the Sixth Amendment issues it raises.

Planning Ahead

You may wish students to read the introduction and the three narrative sections which precede the **Critical Thinking Exercise** of Lesson 27 prior to your next class meeting.

You may also wish to consider having students debate the issue of capital punishment or hold a forum on this controversial topic. If so, you may wish to invite a proponent and opponent of the death penalty, a judge, or a legislator to class to discuss the issue with your students.

Lesson 27

How Does the Eighth Amendment Protect You from Excessive Bail and Cruel and Unusual Punishments?

Lesson Overview

The Eighth Amendment protects the rights of people who have been arrested and are being held for trial as well as persons who have been convicted of crimes. It prohibits excessive bail, excessive fines, and cruel and unusual punishment. Students will examine the history of these protections and their importance today. They will then focus on the meaning of "cruel and unusual punishment" as it applies to capital punishment. Students will look at the history of the death penalty and consider the issues that are involved in allowing capital punishment. Students should understand that even if the Supreme Court rules the death penalty is constitutional, this does not mean that state legislatures have to impose it. There is a distinction between the legality of the death penalty and the political choice to use it.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. identify the rights protected by the Eighth Amendment
2. explain the history and purpose of these rights
3. describe the issues raised by the use of the death penalty
4. take, defend, and evaluate positions on the use of capital punishment

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Note: Before proceeding, you may wish inform students that they will not be studying the Seventh Amendment. The Seventh Amendment was written to preserve the right to a trial by jury in most civil cases. Although it specifically mentions cases of common law, it has never been interpreted to exclude other types of civil cases. Like the rest of the Bill of Rights, it was designed only to limit the power of

the federal government. This amendment has never been incorporated or applied to the states. Even at the time of the drafting of the Constitution, state jury systems varied. Theoretically, state legislatures could abolish jury trials in civil cases.

B. Reading and Discussion

After students have read the first three narrative sections, discuss them by asking questions such as the following:

- What branches of government are limited by each right? How are they limited?
- Who has the power to set punishments? How is this power limited?
- In what way is the Eighth Amendment based on the presumption of innocence?
- What limits have been placed on the right to be free on bail pending trial? In your opinion, are these limitations justified?
- What problems have resulted from the bail system and what would you suggest to correct them? What interests and values underlie your suggestions?
- In what ways would excessive fines violate individual rights and promote injustice?
- Upon what fundamental values is the right to be free from cruel and unusual punishment based?
- How would you define "cruel and unusual"? In your opinion, what punishments would fall into this category?

C. Critical Thinking Exercise: Examining Early Positions on Punishment

Have students work individually or with a study partner to consider Montesquieu's and Jefferson's statements about the nature and function of punishment. After discussing their opinions with one another and noting them in their program journals, students should be prepared to discuss their views with the rest of the class.

Have students compare their ideas using the questions provided to guide discussion. In justifying their personal positions on this issue, have students state what important interests and fundamental values they considered in reaching their opinions.

D. Reading and Discussion

Have students read the remainder of the lesson, discussing the important narrative points. Then ask them to state the most important points made in this section of the lesson. You may then wish to hold a debate or forum on capital punishment. To assist you, the following is a list of some of the arguments on each side of the issue and some evaluation questions:

Arguments favoring the death penalty:

- **It acts as a deterrent.** The death penalty deters crime no matter what the findings of social science studies appear to reveal. The findings are inconclusive and contradicted by common sense and the observations of many people in the criminal justice system whose daily lives place them close enough to the problem to enable them to observe the effects of the penalty.
- **It is supported by public opinion.** A majority of the American public supports the death penalty. This position is also reflected by a majority in Congress and the state legislatures. Thus, the penalty does not violate contemporary standards of decency, fair play, and respect for human beings.
- **It serves as retribution.** It is not unworthy to extract retribution from persons guilty of horrible crimes.
- **It considers victims' rights and feelings.** The family and friends of murder victims are victims themselves. They often call for and deserve to have the death penalty imposed on those who have wronged them and their loved ones.
- **The cost can be reduced.** It is true that, given the numerous appeals allowed under the right to *habeas corpus*, the death penalty at present results in a higher cost to the public than life imprisonment. However, by limiting the number of *habeas corpus* appeals a prisoner can make, the cost can be significantly reduced. As you have seen, the Supreme Court has started to reduce the number of *habeas corpus* appeals.
- **Dangerous criminals are set free.** The system presently operates in such a way that murderers serving long or life sentences can sometimes be paroled if they meet certain standards. This parole system makes mistakes. All too often dangerous persons are set free. Sometimes they seek revenge on those responsible for their conviction. People should not have to live in fear of a murderer's release. Also, the general public usually is endangered by the presence of murderers.

Arguments against the death penalty:

- **It doesn't deter crime.** The main argument for the death penalty is that it deters crime. Neither social science studies nor opinions of the Supreme Court support this claim. Although social science studies may have shortcomings, the evidence they reveal is the only rational basis available for developing an informed position on this issue. All other bases for claiming that evidence supports deterrence are personal and not objective.
- **A reasonable person would be deterred from crime by the threat of imprisonment or loss of life.** However, killing another person is not a reasonable act. Murder is usually done in a fit of passion when a person's reason is impaired or it is planned logically in a way to escape detection. In the first instance, the thought of punishment doesn't occur to the person. In the second instance, the person expects to escape punishment. Therefore, in neither instance would the threat of death deter the murderer.
- **Statistics show that states with death penalties do not have lower murder rates than states that do.** In a recent study by the Federal Bureau of Justice Statistics (1986), it was found that of the ten states with the highest murder rates, eight have the death penalty. In the ten states with the lowest murder rates, seven do not have the death penalty.
- **The death penalty violates equal protection of the laws.** The way the death penalty is applied results in unfair discrimination against black people. It is used far more often when the killer is

black and the victim is white. It is applied inconsistently to blacks and whites, and it is used far more often against poor people than rich people.

- **Innocent people have been executed.** Although the numbers are not large, innocent people have been executed. In 1986 a study showed that of 16,505 persons arrested for murder, 139 were sentenced to death and later found innocent. Of this number, 23 were actually executed. A humane society cannot tolerate the execution of innocent people. Such accidents can be avoided by prohibiting the death penalty and providing for life imprisonment.
- **The cost of administering the death penalty is higher than keeping people in prison for life.** A study conducted in Florida revealed that the cost of executing a prisoner, including the cost of trial and appeals, was $3.2 million. The cost of keeping that same prisoner in prison for life would have been $516,000. Obviously, it would cost taxpayers less to prohibit the death penalty.
- **Other civilized nations have abolished the death penalty.** The United States is one of the few industrialized democracies in the world that still retains the death penalty. The fact that all these other nations have abolished the penalty sets a standard that the United States should follow.
- **Contemporary moral standards should prevent the death penalty.** The United States has advanced to the point where the imposition of the death penalty violates standards of morality and justice that should be upheld. It is a barbarous act more characteristic of less developed and repressive societies and should not be used by a civilized nation.

Evaluating the arguments:

1. What appear to be the strengths and weaknesses of each of the arguments presented by each side?
2. What are the moral positions taken by each side? What values and interests are involved in each position?
3. Should the question of the death penalty be handled by the courts as a constitutional issue or by the state legislatures or Congress? Explain your position.
4. What position would you take on the constitutionality of the death penalty? Explain your position.
5. What position would you take on the desirability of the death penalty, regardless of its constitutionality? Upon what interests and values is your position based?
6. What steps could you take to influence decisions about the death penalty?

E. Concluding the Lesson

Conclude the lesson by asking students who have been collecting clippings on Eight Amendment issues to update the class. What national, state, and local issues concerning this amendment have been in the news? Be sure to address noncriminal due process issues and those involving all branches and agencies of the government, not just the courts. One issue which has been raised which might be of particular interest is whether or not corporal punishment of minors in public schools violates the ban on cruel and unusual punishment.

Then have your students consider the **Using the Lesson** questions or assign them as written homework. To conclude study of this unit, ask students whether they think procedural due process rights should be limited further in order to improve government efficiency, cut costs, or protect law and order. What other methods could be used to achieve these goals without further limiting due process rights? What role could the average citizen play in this process?

Finally, ask students to express what they feel are the most important things they have learned in this unit. They may wish to write their opinions in their program journals.

Optional Reinforcement and Enrichment Activities

1. **Capital Punishment Survey.** Have students prepare and conduct a survey of the school community on the constitutionality and desirability of the death penalty. Students should design questions that elicit why those surveyed believe as they do. Students should tabulate and report the results in your school or community newspaper.
2. **Due Process Editorials.** Have students evaluate one of the following statements, the first by British jurist Lord Sankey and the second by Supreme Court Justice Douglas. The editorials should address the statements in terms of the due process protections of the Bill of Rights. (1) "No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law...and no attempt to whittle it down can be entertained." (2) "Society wins not only when the guilty are convicted, but when criminal trials are fair."
3. **Bail Interviews.** Have a group of students interview probation officers, public defenders, judges, state legislators, or victim advocates about what reforms of the bail system, if any, they would suggest, as well as their views about the following statement: "The presumption of innocence, secured after centuries of struggle, would lose its meaning [if those accused of committing a crime could not be released on bail prior to trial.]" (*Stack v. Boyle*, 1951)

Student Unit Review

You may wish to reproduce the following **Student Unit Review** for your students. The entire review may be used as a unit test, or you may choose to assign sections for homework or as a classroom study guide to help students review the unit. For Unit Five, Section B, the **TRUE** statements are numbers 2, 3, and 5.

STUDENT UNIT FIVE REVIEW

A. Use each of the following terms in a sentence to show you know its meaning.

- procedural justice
- probable cause
- exclusionary rule
- immunity
- jury nullification

B. Identify each true statement and correct each false statement.

1. In order to secure procedural due process, the Bill of Rights included amendments to prohibit the federal government from denying rights such as *habeas corpus* and trial by jury.
2. Despite constitutional provisions concerning due process, minorities have often been denied these rights.
3. The rights of due process are based on the concept of the rule of law found in the Magna Carta.
4. The Fourth Amendment has been interpreted to limit the power of federal government officials to search a person's home, but not as a general right to privacy.
5. The right to remain silent as protected by the Fifth Amendment was drafted to prohibit the use of forced confessions as evidence in a court of law.
6. The Sixth Amendment allows individuals accused of a crime the right to confront witnesses against them, but does not require the government to produce witnesses who have favorable evidence to appear in court.
7. The Eighth Amendment prohibits the federal and state governments from keeping poor people in jail if they cannot afford bail, fining those convicted of crime, and using the death penalty.

C. Write a short essay to answer two of the following questions:

1. How are all three branches of government affected by the rights to procedural due process?
2. What interests and values are at stake in deciding whether or not to limit the rights of due process?
3. In what ways are First Amendment rights related to the right against self-incrimination protected by the Fifth Amendment?
4. Why would a free society based on limited government power and protection of individual liberties be impossible without the rights to due process of law?

D. What do you think? Express and justify your opinion about one of the following:

1. Do you agree with Justice Brandeis that "if the government becomes a lawbreaker, it breeds contempt for the law; it invites every man to become a law unto himself; it invites anarchy"?
2. What due process issues do you think are most critical today and what would you suggest be done to remedy these problems?

© Center for Civic Education
Limited reproduction rights granted for school use only.
With Liberty and Justice for All

Unit Six

Who Should Be Responsible for Preserving and Extending Our Heritage of Individual Rights?

Unit Overview

The final unit of the text opens by examining the unenumerated rights referred to in the Ninth Amendment. Students will explore the controversies that have arisen over the identification and establishment of these rights. They will also examine the roles played by Congress and the executive branch in protecting and extending the rights of individuals and minorities. Then, in Lesson 30, students will consider the question of rights from an international perspective. They will examine the historical events that led to the Universal Declaration of Human Rights. Students will compare the rights protected in this document with our own Bill of Rights. In the final lesson of the text, students will return to the issue raised by Judge Learned Hand in Lesson 2, that is, the relationship between rights and responsibilities. Students will analyze the thoughts of a number of different people who have considered the question of responsibility. Students will be able to take and defend a position on the role of individuals in protecting rights and promoting justice.

Unit Objectives

At the conclusion of this unit, students should be able to

1. explain what is meant by unenumerated rights and the problems that arise in attempting to identify these rights
2. explain the controversy over which branch of government should have the power to identify unenumerated rights
3. describe the history of actions protecting rights taken by Congress, the executive branch, and the Supreme Court
4. describe the historical background and reasons for the Universal Declaration of Human Rights
5. explain the major differences between the Universal Declaration and our Constitution and Bill of Rights
6. take, defend, and evaluate positions on what rights, if any, from the Declaration should be established in the United States
7. take, defend, and evaluate positions on the role of individuals in protecting rights and promoting justice

Unit Introduction

Have students turn to Unit Six and read the **Purpose of Unit** section. Note the key themes which you may wish to write on the chalkboard for reference:

- Our rights have been expanded over the centuries thanks to the efforts of men and women of all races, ethnic groups, and beliefs.
- Today we more closely live up to the values and ideals upon which our nation was founded than we once did.
- We enjoy rights not specifically identified in the Constitution and Bill of Rights.
- All branches of government have played a role in establishing and protecting rights.
- All people have a responsibility to protect rights and promote justice.

Review the **Timeline** and have the unit docents add any information they may have gathered.

Planning Ahead

In this unit, students will be discussing their own responsibilities and how they might have an impact on public policies affecting our rights. You may wish to invite community activists, representatives from citizen lobbying groups, members of the League of Women Voters, or other bipartisan political organizations to your class to discuss ways your students can take an active role in our participatory democracy even before they are old enough to vote.

Unit docents should also be prepared to update the class on current issues relating to the study of the extension and preservation of our rights.

Note: As homework, you may wish students to read the lesson introduction and first three narrative sections of Lesson 28 prior to class. They also should write their answers to the questions posed in the **Critical Thinking Exercise** and be prepared to share their ideas about unenumerated rights with their classmates. Should you not wish students to complete the reading and exercise independently, structured discussion ideas are provided in the next lesson of this guide.

Lesson 28

How Have Unenumerated Rights Been Identified and Protected by the Supreme Court?

Lesson Overview

In this lesson, students will consider the question of those rights which are referred to in the Ninth Amendment as unenumerated rights. They include such protections as the right to privacy which is implied by other constitutional provisions but not included in the Constitution or Bill of Rights. Students will begin by considering the history of both the Ninth and Tenth Amendments. They will then consider the problem of how to identify unenumerated rights. They will examine the arguments in favor of and against using the idea of natural rights or substantive due process to identify unenumerated rights. Students will also explore the problem of who should be responsible for identifying unenumerated rights. Critics of the Supreme Court argue in favor of limiting the discretionary powers of the justices and prefer that unenumerated rights be protected by legislators who are directly answerable to the people for their decisions.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. describe the history of the Ninth and Tenth Amendments
2. explain what is meant by an unenumerated right
3. explain problem that arise from using the idea of natural rights to identify unenumerated rights
4. explain problems that arise from using the idea of substantive due process to identify unenumerated rights
5. take, defend, and evaluate positions on the proper role of the Supreme Court and Congress in identifying unenumerated rights

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Note: If the reading and exercise have been previously assigned as homework, skip to section C.

B. Reading and Discussion

After students have read the narrative sections which precede the **Critical Thinking Activity**, ask them to recall that during the debate over ratification, the Federalists claimed that any listing of rights would be incomplete.

Have students paraphrase the Ninth Amendment. You then may wish to share James Madison's statement introducing it to his fellow congressmen:

> *It has been objected also against a bill of rights, that, by enumerating particular exceptions to the grant of power, it would disparage those rights which were placed in the enumeration; and it might follow by implication, that those rights which were not singled out, were intended to be assigned into the hands of the General Government, and were consequently insecure. This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see by turning to the last clause of the...resolution [the Ninth Amendment.]*

To guide discussion, ask questions such as the following:

- What appears to be Madison's reasons for writing what became the Ninth Amendment?
- Do you agree with Justice Hugo Black's statement concerning the Ninth Amendment? Why or why not?
- Why do you think interest in the Ninth Amendment has increased in recent years?
- Do you think this amendment should be used as the primary justification for protecting unenumerated rights?

Then ask students to paraphrase the Tenth Amendment. Reiterate that our form of government is one of delegated powers. Those powers not specifically identified in the Constitution as belonging to the federal government belong to the states or are held by the people directly. To continue discussion ask:

- To what powers might the Tenth Amendment be referring?
- How does this amendment protect the powers of state governments?
- In what ways does the Tenth Amendment echo the concept of the social contract championed by the natural rights philosophers?
- In your opinion, has this amendment been a sufficient limit on the powers of the federal government?
- Do you think Anti-Federalist concern over the "necessary and proper" clause (see Lesson 11) has proven justified? Has it enabled the federal government to circumvent the limitations the Tenth Amendment placed on its power?
- In your opinion, has the incorporation process undermined the intent of the Tenth Amendment? If so, in what ways?

Next discuss the problems which have arisen as the result of using the natural rights philosophy as a source for unenumerated rights. What are the strengths and weaknesses of the arguments both for and against a natural rights justification?

Have students consider the case of *Crandall v. Nevada* (1868) and the right to travel. You may wish to note that this right is not universally acknowledged. In certain nations, one must show identification papers or special travel passes to move from one area of the country to another. Do students think the Ninth Amendment would have made as good a source for the right to travel as the natural rights philosophy? If natural rights arguments are used as a basis for one's rights, how should conflicts between various natural rights, such as liberty versus property, be resolved? How should one decide which right takes precedence?

Then consider the Fourteenth Amendment's right to substantive due process as justification for unenumerated rights. Ask students to evaluate this source and compare it with the others discussed above. What problems have arisen historically from the substantive due process argument? Did it solve conflicts between liberty and property rights?

Finally, have students summarize the strengths and weaknesses of using (a) the natural rights philosophy, (b) substantive due process, and (c) the Ninth Amendment as a justification for unenumerated rights. What guidelines or criteria would they use to evaluate whether an unenumerated right is constitutionally protected? What important interests and values are relevant?

C. Critical Thinking Exercise: Examining Issues Raised by the Concept of Unenumerated Rights

Have students share their homework assignments or work in study pairs to answer the questions posed in this exercise. During discussion, you may wish unit docents who have been researching unenumerated rights to offer examples of times when various methods of justifying and interpreting these unlisted rights have been used.

After discussion, are your students able to reach a consensus on what should be used as the source or justification for unenumerated rights? What values and interests should be considered when trying to decide whether an unenumerated right is constitutionally protected? Who should decide what is or is not an unenumerated right? Are there any rights which they would favor specifically protecting through constitutional amendment?

D. Reading and Discussion

Have students complete the lesson narrative. Ask questions to guide discussion in order to highlight issues concerning unenumerated rights.

In discussing *Griswold,* note that the arguments harken back to the debate about what is a fundamental right (see Lesson 18) and the Court's decision in *Adamson v. California* (1947). In that case, Justice Black said (in his dissent) that by virtue of the Fourteenth Amendment, all rights enumerated in the Bill of Rights were also applicable to the states, not just those deemed "fundamentals of ordered liberty."

Ask students what they think of the positions taken by Justices Black, Murphy, Douglas, and Burger. For example:

- Do you agree with Justice Douglas that the *Griswold* case concerned a "relationship lying within the zone of privacy created by several fundamental constitutional guarantees"? If so, which guarantees?
- Justice Black argued that natural law should not be used as the basis to "keep the Constitution in tune with the times." Do you agree or disagree?

Finally, ask students to look again at Chief Justice Warren Burger's decision in *Furman v. Georgia*. Ask them to compare his views with those of Justice William J. Brennan in terms of (a) protection of unenumerated rights, (b) the issue of legislating from the bench, (c) the doctrine of separation of powers, and (d) the role of citizens in influencing constitutional interpretation. With which position do they agree and why?

Note: You may wish to expand this discussion by holding a debate on the topic as suggested in the **Optional Reinforcement and Enrichment Activities.**

E. Concluding the Lesson

If you have not already done so, discuss current national, state, and local issues relevant to unenumerated rights and the role of the courts in interpreting, applying, and limiting rights. Then have students consider the **Using the Lesson** questions or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Debating the Court's Role.** Have students form two debate teams, one representing the viewpoint of Justice Burger and the other of Justice Brennan. Have them debate the role the Supreme Court should play in expanding rights. You may wish to invite a district, state, or federal justice to judge the debate and discuss the issue afterwards with your class.
2. **Penumbras and Federalism Position Papers.** Have students write short position papers stating whether they agree with Justice Black that the way the Court has interpreted claims for unenumerated rights has too often allowed justices to "trespass, all to freely, on the legislative domain of the States as well as the Federal Government" (*Adamson v. California*, 1947, dissent).
3. **Enumerated Rights Survey.** Sam Adams wrote in a 1772 propaganda piece that "every natural right not expressly given up [when entering the] Social Compact necessarily...remains [the right of the people]." Have students survey the school community asking what rights, not listed in the Constitution and Bill of Rights, individuals think they have. What rights make the top ten? Have students publish the results in a school newspaper or in a bulletin board display.

Planning Ahead

You may wish students to read Lesson 29 and write their answers to the **Critical Thinking Exercise** questions prior to your next class session. You also may want to make copies of your state constitution available for reference. Finally, consider inviting a staff member from your congressional representative's office to discuss current civil rights legislation with your class. You also might wish to invite a member of a civil rights organization or other citizen action group, such as Common Cause or the Sierra Club, to talk with your students about how they might participate in influencing their government on various issues prior to voting age.

Lesson 29

What Have Been the Roles of Congress and the Executive Branch in Protecting and Expanding Rights?

Lesson Overview

This lesson will focus on the roles of Congress and the executive branch in protecting rights. Students need to understand that our system of separation of powers has provided people with many avenues to seek protection of their rights. The Supreme Court has been the major protector of individual rights but the other branches of government have also played important roles in defending and extending rights. Students will examine how congressional legislation and presidential acts have been used to protect the rights of minorities. They will also see that, in the end, it is not only the responsibility of government but of every citizen to protect individual rights.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. describe the history of congressional legislation and presidential actions intended to protect individual rights.
2. explain the controversies that have arisen over the role of Congress and the executive branch in protecting rights.
3. take, defend, and evaluate positions on alternative means of protecting individual rights.

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Then ask students to scan the Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-third, Twenty-fourth, and Twenty-sixth Amendments to the Constitution (in the **Appendix**). What do they all have in common? Do your students think that the empowerment of Congress to pass legislation to achieve the goals of each amendment gives Congress powers not originally intended by the Framers? What impact might this empowerment have on the protection and expansion of rights? On federalism?

B. Reading and Discussion

Have students read the narrative sections which precede the **Critical Thinking Exercise.** Then guide discussion of the main points by asking students questions such as the following:

- What effect did the decisions in the Civil Rights Cases of 1883 have on achieving the goals of the Civil War Amendments?
- What effect has the power of Congress to pass legislation limiting the powers of state governments had on federalism? On the powers of the state governments?
- What are the advantages and disadvantages of Congress having increased responsibility to set national standards for the protection of individual rights?
- What effect did World War II have on the expansion of individual rights?
- Why did civil rights leaders look to the federal courts rather than to other branches of the federal and state governments for protection of minority rights? What does this imply about the wisdom of the Framers in designing a system in which federal judges were appointed with lifetime tenure, rather than being elected by popular majority?
- How would you describe the role the executive branch of government has played since the Civil War in the protection of individual and minority rights?
- Why is the decision in *Brown v. Board of Education* (1954) of such significance in the history of the Bill of Rights?
- Why might voter registration drives be such a good strategy for securing civil rights for minorities?
- How do the civil rights acts passed by Congress after the Civil War compare with congressional civil rights legislation in the latter part of the twentieth century in terms of (a) their goals, (b) the values and interests upon which they were based, and (c) their effectiveness? How would you account for both the similarities and differences?
- What is the significance of the commerce clause in the history of civil rights? Do you think it gives Congress the constitutional power to pass civil rights legislation that affects the states?
- How has civil rights legislation in the last few decades advanced the cause of equal rights for women? Do you think an equal rights amendment is necessary or would it work against the interests of women?
- How have separation of powers and checks and balances provided people with more than one avenue to secure and protect their rights?
- What role do state constitutions play today in protecting individual and minority rights? What provisions in your state constitution do so?
- What is meant by the statement "We have met the enemy and it is us"? Do you agree? How would you define the role of citizens in protecting and advancing their rights?
- Why did Senator Dirksen say that denying someone else's freedom diminished him personally? Do you agree?

C. Critical Thinking Exercise: Identifying Methods for Protecting Your Rights

If your students have already prepared answers to these questions as homework, have them now share their ideas about ways they can participate in protecting their rights. Alternately, divide the class into study triads. Have each group discuss their ideas and then share them with the rest of the class.

If you have invited a representative from your local congressional office or a member of a citizen lobbying or interest group to class, have him or her participate in the discussion. You may wish unit docents to share examples of current rights issues under consideration. How might your students be able to influence decisions about such issues?

During discussion, be sure to emphasize that it is because of both the way our government is designed with separation of powers and checks and balances as well as the existence of a bill of rights that we are able to work for the protection of our rights and hold government officials accountable. Note that it is the combination of the ideas of Madison and Hamilton, who put their faith in the design of government, and Jefferson and Adams, who emphasized the need for a bill of rights and civic responsibility, which has led to the creation of a free society where individual rights are protected.

D. Concluding the Lesson

If you have not already done so, discuss national, state, and local issues concerning the protection or expansion of rights. Students may wish to choose a local issue with which to become involved. What impact could they have on this issue? What means would they use to participate?

You also may wish to discuss some of the constitutional amendments proposed in recent years, such as the ERA, a balanced budget amendment, a right-to-life amendment, a right-to-choose amendment, and a guaranteed job amendment. What role could students play in revitalizing interest in these amendments, influencing their outcome, or having additional amendments proposed?

Finally consider the **Using the Lesson** questions or assign them as written homework.

Optional Reinforcement and Enrichment Activities

1. **Self-Government Essays.** Have students write essays expressing their personal views about the statement below. The essays should address the special role people living in a constitutional democracy play in advancing and protecting rights, both through their individual actions and by influencing public officials.

   > *The American people have had quite a lot of practice in the past decade or two in getting ahead of their leaders....The tidal wave of social change these past twenty years—environmental sensitivity, civil rights for all races, the enhanced status of women, recognition of the right of consumers and small investors—was not generated by the established leaders, but boiled up from the people at large.*
   >
   > Harlan Cleveland, *Megatrends*

2. **War Letters.** Have students work in pairs to research the experience of minorities who served in the armed forces during World War II and those who stayed at home. To express what they have learned, have the student pairs write a series of letters to each other from the viewpoints of a serviceman or woman and a friend or family member on the homefront. To begin their research,

they might investigate issues such as the president's executive order of 1941 banning discrimination in defense industries, Japanese internment, the zoot suit riots, racial tension in GI housing, and Jim Crow laws in the military.

3. **Participatory Process Posters.** Have students design posters advocating the involvement of young people of both voting and nonvoting age in the political process. Have class representatives speak with local business owners or managers about placing the posters in bank lobbies, real estate offices, travel agencies, restaurants, movie lobbies, bowling alleys and store fronts, as well as in public libraries, town or city halls, courthouses, community centers, and schools.

4. **Advancement Essays.** Have students write essays evaluating the following statement and expressing their personal views about the expansion of rights for women, gains that have been made, future goals, and individual responsibility for achieving them:

> *In recent years many legal and educational barriers to female achievement have been removed; but it is clear that a psychological barrier remains. The motive to avoid success has an all-too-important influence on the intellectual and professional lives of women in our society. But perhaps there is cause for optimism.*
>
> Martina Horner, *Wisdom of Famous American Women*

Lesson 30

What Can Be Learned from an International Perspective on Human Rights?

Lesson Overview

In this lesson, students will explore the protection of rights from an international perspective. They will focus on the Universal Declaration of Human Rights which can be found in the Appendix. Students will begin by considering the historical background of the Universal Declaration. They will look at the horrible abuses of individual rights that occurred in the twentieth century, particularly by the Nazis during World War II and by Joseph Stalin in the Soviet Union. Students will examine the Universal Declaration and compare it with our Constitution and Bill of Rights. They will consider the similarities and differences between the international document and our Bill of Rights. Students will decide if they think any of the rights contained in the Declaration that are not included in the Bill of Rights should be established in the United States. They will also explore the problem of enforcing human rights on an international scale.

Lesson Objectives

At the conclusion of this lesson, students should be able to

1. describe the historical background and reasons for the Universal Declaration of the Human Rights
2. explain the major differences between the Universal Declaration and our Constitution and Bill of Rights
3. explain problems involved in attempting to enforce the protection of human rights on an international level
4. take, defend, and evaluate positions on what rights, if any, from the Declaration should be established in the United States

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson. Then have a student read aloud the **Terms to Know** and write them on the chalkboard for reference. As you proceed through the lesson, be sure to have students discuss their answers to the factual and critical thinking questions posed in the illustration captions.

Then read or write on the chalkboard the following statement by Polish Solidarity leader, Lecq Walesa, and ask students what they think it means and whether they agree with the statement. Have them jot down

their responses in their program journal for later reference. Students may be interested to know that Walesa was unable to deliver his speech in person because his government had denied him the right to travel outside of the borders of Poland.

> *Human rights, wherever they may be violated, always humiliate other people and man in general.*
>
> Harvard Commencement, June 9, 1983

B. Preparing for the Critical Thinking Exercise

Have student read the first narrative section. Briefly discuss the similarities and differences between the Nazi regime and other historical examples of massive violations of rights such as the Spanish Inquisition, witch burnings, pogroms against Jews, the Turkish massacre of Armenians, and apartheid. What did these events have in common? What role did economic depression, postwar devastation, and the rise of nondemocratic forms of government play in the violation of human rights? What values and interests were promoted or undermined by these events?

C. Critical Thinking Exercise: Examining the Universal Declaration of Human Rights

After students have read the Declaration of Human Rights, have them work in small groups to analyze the document as suggested by the first four questions provided in the student text. Have recorders note the opinions of group members and spokespersons prepare to present these views to the entire class.

In discussing these questions as a class, you may wish to ask students to compare the documents in terms of the values and interests upon which each is based. What responsibilities are implied by these different documents? Do the differences between the documents make achieving the goals of both impossible?

Ask students to recall the debate over equality of condition versus equality under the law which they discussed in Lessons 15 and 16. How are these different concepts reflected in the rights included in our Constitution and Bill of Rights and in the Universal Declaration of Rights?

After this initial class discussion, individual students should work independently and write down their answers to the questions posed in the "What do you think?" section. A second class discussion should then be held in which students share and compare their personal views. Upon what values and interests are their opinions based? Is their a commonality of viewpoint? What responsibility on a personal level might these views entail?

D. Reading and Discussion

Have students read and discuss the final narrative section. To do so, you may wish to ask:

- In what ways are the Universal Declaration of Human Rights and our Bill of Rights similar and dissimilar?
- Are human rights the same as what eighteenth-century philosophers meant by natural rights? Why or why not?
- How is the debate over equality of condition versus equality under the law (see Lessons 15 and 16) relevant to comparisons between our Bill of Rights and the Universal Declaration?

- Do you agree with President Franklin D. Roosevelt (1882-1947) that "every man has a right to life; and this means that he has the right to make a comfortable living"? If so, should our Bill of Rights include economic rights such as those in the Declaration of Human Rights? Why?
- What is meant by the Declaration's phrase "a common standard of achievement"?
- Would such an obligation undermine the concepts of national identity and sovereignty?
- Should countries of different religions, cultures, and government be bound by some common law?
- Is there some type of commonality of human experience which justifies the concept of human rights?
- What moral obligation, if any, do individuals have to promote and protect human rights?
- What responsibility, if any, do citizens in free societies have to help those living in societies which are not free achieve their rights?
- If you think that the Universal Declaration of Human Rights should be enforced, how might that be done?
- What values and interests might be promoted or undermined by different points of view on these issues?

E. Concluding the Lesson

Conclude the lesson by asking students who have been collecting clippings on human rights issues to update the class. What national, state, and local issues concerning human rights have been in the news?

Then consider the **Using the Lesson** questions or assign them as written homework. After considering the issues raised in class, do they still feel the same way about human rights and the impact that violation of these rights has on all of us? Have them answer this question in their journals.

Optional Reinforcement and Enrichment Activities

1. **Letter Writing for Rights.** Students may wish to become personally involved in the struggle for worldwide human rights by participating in letter-writing campaigns designed to influence public policy about human rights issues. To do so, they should contact the local office of the nonsectarian, bipartisan global organization Amnesty International. A representative will send packets of information and perhaps visit with interested students.
2. **Global Policy Issues Interviews.** Have students interview journalists, congressional staffers, international politics professors, or a member of Amnesty International about what international role America should play and what impact that might have on the advancement or undermining of human rights issues. The interviews could be conducted in class or over the phone. Students should report back to fellow students about what they have learned.
3. **Artists and Human Rights Report.** Have students create a multi-media report highlighting the role artists have played in advocating and promoting human rights and making others aware of violations of these rights.

Lesson 31

What Responsibilities Do People Have in Preserving and Extending Rights?

Lesson Overview

In the concluding lesson of the text, students will return to the issue raised by Judge Learned Hand in Lesson 2: what are the responsibilities of people in protecting individual rights? The lesson opens with a quotation from Thomas Jefferson which explains that a constitutional democracy must rest on an enlightened citizenry. The success of our system of government ultimately depends on the character and commitment of the people. Students will examine the ideas of a number of individuals who, over the centuries, have written about rights and responsibilities. Students will analyze these quotations and consider their own responsibility to make the ideals of liberty and justice a reality for all.

Lesson Objectives

At the conclusion of this lesson, students will be able to

1. explain the importance of the character and commitment of citizens to preserving and extending rights
2. analyze and evaluate the ideas of people who have written about rights and responsibilities
3. take, defend, and evaluate positions on the role of individuals in protecting rights and promoting justice

Teaching Procedures

A. Introducing the Lesson

Begin, as previously, by asking students to read the **Purpose of Lesson** section, identifying what they should be able to do upon completion of the lesson.

B. Preparing for the Critical Thinking Exercise

Have students read the narrative section which precedes the exercise. Ask them to paraphrase Jefferson's statement and discuss the following questions:

- What relevance, if any, do Jefferson's words have today?

- Why does a constitutional democracy necessitate "an enlightened and responsible citizenry"?
- What would happen without one? Do we have one today? Why or why not? If not, what could be done to achieve this goal?
- In your opinion, were Madison and Hamilton correct in their views about government institutions? What historical or contemporary examples can you give to support your position?
- In what way do the views of Jefferson and Adams reflect the ideas of classical republicanism? Do you think they were correct? Offer historical and contemporary examples to justify your opinion.
- Do you agree with the statement that even the most carefully designed political institutions are ultimately dependent on the character of the people and those whom they choose for public office? Explain your answer.

C. Critical Thinking Exercise: Examining Messages from the Past

Have students work individually or in study pairs to read and analyze each statement. Or divide the class into small groups, assigning each group one of the statements to analyze. Students should answer the "What do you think?" questions and be prepared to discuss them with the rest of the class.

To guide discussion, you may wish to ask:

1. What is meant by each statement?
2. What values or interests underlie each statement?
3. What types of laws, policies, or interpretations of the Constitution might logically follow from the position taken by each statement?
4. With which statements do you agree? Why?
5. What does that imply about your own personal responsibilities about protecting both your rights and those of others?

Concluding the Lesson

Have students complete the reading and paraphrase Madison's statement. Then ask them to take a few moments to page through the program journals which they have been keeping. Over the past weeks, they have made a number of lists concerning the rights they have and the responsibilities these rights entail. Have them scan their lists. In what ways have their opinions about rights and responsibilities evolved during this course of study? How do their views compare with Madison's?

Optional Reinforcement and Enrichment Activities

1. **Citizenship Editorials.** Have students write editorials on the role of citizens in a constitutional democracy, using the following quotation by Adlai Stevenson (1900-1965) as a starting point: "As citizens of this democracy, you are the rulers and the ruled, the lawgivers and the law abiding, the beginning and the end."

2. **Bill of Rights Radio Show.** Have students work together to simulate a radio talk show with listener call-ins. The show, which students may wish to tape, should focus on listener reactions to the following statement by Justice Jackson: "The purpose of the Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy...beyond the reach of majorities."
3. **Dear Pericles.** Have students write letters to the Athenian statesman Pericles (d. 429), explaining why they agree or disagree with his statement that "We...do not call a man who takes no part in public life quiet or unambitious; we call such a man useless."

Films on Rights and Responsibilities

The following films and videotapes are some of the fine movies which raise issues relevant to the study of our rights and responsibilities. You may wish to preview these films and possibly view and discuss some of them with your class as a culminating activity and an entertaining reward for a job well done.

- *Field of Dreams*
- *Man For All Seasons*
- *Judgment at Nuremberg*
- *Seven Days in May*
- *All The President's Men*
- *Gentlemen's Agreement*
- *Autobiography of Miss Jane Pitman*
- *Twelve Angry Men*
- *To Kill a Mockingbird*
- *Gideon's Trumpet*
- *Star Chamber*
- *Fear on Trial*
- *Inherit the Wind*
- *Goodbye Miss 4th of July*

Student Unit Review

You may wish to reproduce the following **Student Unit Review** for your students. The entire review may be used as a unit test, or you may choose to assign sections for homework or as a classroom study guide to help students review the unit. For Unit Six, Section B, the **TRUE** statements are numbers 1, 3, 4, and 5.

STUDENT UNIT SIX REVIEW

A. Use each of the following terms in a sentence to show you know its meaning.

- civil rights
- unenumerated rights
- commerce clause
- human rights

B. Identify each true statement and correct each false statement.

1. The Ninth Amendment was written to protect individual rights not listed in the Constitution or Bill of Rights.
2. Congress alone has the constitutional responsibility to define the unenumerated rights which must be guaranteed by both state and federal governments.
3. Substantive due process has been used to protect rights not specified in the Constitution or Bill of Rights.
4. All three branches of government have played a historic role in protecting and advancing the rights of minorities.
5. Civil rights leaders turned to the federal courts to seek equality under the law because appointed justices were less likely to be influenced by the prejudice of voters.
6. The fundamental difference between our Bill of Rights and the Universal Declaration of Human Rights is that the former guarantees equality of condition.
7. Jefferson and Adams believed that the responsibility of citizens in a constitutional democracy is limited to electing good people to government.

C. Write a short essay to answer two of the following questions:

1. What sources have been used to claim rights not specifically protected in the Constitution and Bill of Rights?
2. What roles have all three branches of government played in protecting and expanding rights?
3. How have separation of powers, checks and balances, judicial review, the Bill of Rights, and the vigilance of individual Americans all played a part in protecting and expanding individual rights?
4. In what ways are the Bill of Rights and the Universal Declaration of Human Rights similar? In what ways are they different?

D. What do you think? Express and justify your opinion about one of the following:

1. In your opinion, how should the Constitution and Bill of Rights be interpreted in the future to better secure your rights and those of others?
2. What rights are most important to you and what responsibilities, if any, do those rights entail?

© Center for Civic Education
Limited reproduction rights granted for school use only.
With Liberty and Justice for All

CULMINATING ACTIVITIES

After completing the *With Liberty and Justice for All* text, teachers should administer the multiple-choice test designed to assess students' understanding of the curriculum. Upon sucessful completion of the test, class members are eligible to receive special certificates of achievement provided by the Center for Civic Education. These certificates, when signed by a member of Congress or another prominent official, provide a special recognition of student achievement. Teachers may choose to present these certificates to students at a special awards ceremony.

Teachers are encouraged to conduct a simulated congressional hearing to promote students' depth of understanding and to stimulate critical thinking about the major issues and concepts presented in the text. In preparing for the hearing, the class should be divided into six groups, each group becoming "expert" in one of the six units in *With Liberty and Justice for All.* Each group is given three open-ended questions related to major concepts in its unit. The questions require that the group take positions on constitutional issues of contemporary relevance. Each group is then asked to address one of the three questions at the hearing. The group members do not know which question they will be asked until they appear before the committee.

At the hearing, each of the six expert groups appears before a "congressional committee" composed of three members who may include local government and civic leaders as well as scholars from the fields of political science, history, or law. The members of the congressional committee listen to each group's presentation, question the group on its topic, and score each group based on guidelines provided by the Center.

Each group appears at the hearing for approximately ten minutes. They have four minutes to present their testimony. The congressional committee members then have six minutes to ask follow-up questions. At the end of the ten minute session, the judges (i.e. the congressional committee members) evaluate the group's performance.

Judges are expected to keep in mind that questions are open-ended and that knowledgeable and reasonable people may take different positions on them. Judging is based on how well the presenters demonstrate and apply their knowledge of constitutional history and principles and how well they argue their positions.

Each group is scored on several criteria including knowledge of the history of the Bill of Rights, understanding of the issues, reasoning, supporting arguments, and participation of group members.

For additional information about the simulated congressional hearings or how to enter a national competition based on the hearings, refer to the instructional packet enclosed with this teacher's guide or contact the Center for Civic Education.

SELECTED BIBLIOGRAPHY*

The books in this select annotated bibliography pertain to the origins, enactment, and development of the federal Bill of Rights. Each book includes ideas and information that teachers should know in preparation for curriculum planning and classroom instruction. The books in this list are merely a few of the many outstanding books in print on various aspects of the Bill of Rights. However, they represent some of the best works that are also related to the contents of the social studies curriculum and the objectives of history and civics/government teachers.

Abraham, Henry J. *Freedom and the Court: Civil Rights and Liberties in the United States*. New York: Oxford University Press, 1988.

This is a penetrating analysis of the role of the federal judiciary in protecting and shaping constitutional rights and liberties. There is an excellent discussion of issues associated with the incorporation of the Bill of Rights through the "due processes" clause of the Fourteenth Amendment to the Constitution.

Alley, Robert S., ed., *James Madison on Religious Liberty*. Buffalo, NY: Prometheus Books, 1985.

Alley and other writers, including A. E. Dick Howard, Ralph Ketchum, and Robert Rutland, examine Madison's contributions to the constitutional right of religious liberty. There is an excellent chapter on the religious freedom debate in Virginia, 1784-1786, which led to the enactment of Jefferson's Statute of Religious Liberty. Madison's role in the passage of Jefferson's statute is discussed in detail in relationship with key primary documents.

Baer, Judith A. *Equality Under the Constitution: Reclaiming the Fourteenth Amendment*. Ithaca, NY: Cornell University Press, 1983.

This explanation of the roots of equality in America raises issues and alternative viewpoints. Key federal court decisions of the twentieth century are discussed.

Barnett, Randy E., ed. *The Rights Retained by the People: The History and Meaning of the Ninth Amendment*. Fairfax, VA: George Mason University Press, 1989.

This work includes several chapters by experts on the theories and issues associated with the ambiguous Ninth Amendment to the U.S. Constitution.

Barth, Alan. *Prophets With Honor: Great Dissents and Great Dissenters on the Supreme Court*. New York: Alfred A. Knopf, 1974.

There are case studies on six crucial Supreme Court decisions on constitutional rights, in which the dissenting opinions, years later, became the basis for reversals.

Berman, Daniel M. *It Is So Ordered: The Supreme Court Rules on School Segregation*. New York: W. W. Norton, 1966.

This case study is an excellent treatment of the judicial process in the landmark Supreme Court decision in *Brown v. Board of Education of Topeka*.

Berns, Walter. *The First Amendment and the Future of American Democracy*. New York: Basic Books, 1976.

This eminent scholar examines the origins and development in American history of First Amendment freedoms. He defines and comments on continuing issues about the meaning and application of these constitutional rights, especially the right to religious liberty.

Cox, Archibald. *The Court and the Constitution*. Boston: Houghton Mifflin, 1987.

This is an excellent history of the federal Supreme Court and its part in constitutional development, especially the nationalization of the federal Bill of Rights in the twentieth century.

Curry, Thomas J. *The First Freedoms: Church and State in America to the Passage of the First Amendment*. New York: Oxford University Press, 1986.

The roots of religious liberty in America are examined. Curry treats the issues and alternative views about religious liberty during the American

* Reprinted by permission of the authors, John J. Patrick and Robert S. Leming, *Resources on the Bill of Rights*, ERIC Clearinghouse for Social Studies/Social Science Education, 1991.

colonial era and the founding period of the United States.

Friendly, Fred W. *Minnesota Rag: The Dramatic Story of the Landmark Supreme Court Case that Gave New Meaning to Freedom of the Press*. New York: Random House, 1981.

This is a detailed case study of the landmark Supreme Court decision of *Near v. Minnesota*, which expanded the freedom of the press through the "no prior restraint" rule.

Friendly, Fred W., and Martha J. H. Elliot. *The Constitution: That Delicate Balance*. New York: Random House, 1984.

There are 16 chapters about critical constitutional issues and landmark decisions of the Supreme Court about these issues. Bill of Rights cases and issues are highlighted.

Garrity, John A., ed., *Quarrels that Have Shaped the Constitution*. New York: Harper & Row, 1987.

Twenty case studies about landmark Supreme Court decisions are presented as dramatic stories in American constitutional history. Most of these cases are about constitutional rights.

Hall, Kermit L. *The Magic Mirror: Law in American History*. New York: Oxford University Press, 1989.

This work treats the history of the American legal culture and the law in the lives of citizens. It includes discussions of key constitutional rights cases and issues.

Howard, A. E. Dick. *The Road from Runnymede: The Magna Carta and Constitutionalism in America*. Charlottesville: University of Virginia Press, 1963.

A distinguished constitutional lawyer and historian traces the development of limited government, the rule of law, and civil liberties from medieval England to the founding period of the United States and shows connections, similarities, and differences in the constitutional traditions of England and America.

Hyneman, Charles S., and George W. Carey, eds., *A Second Federalist: Congress Creates a Government*. Columbia: University of South Carolina Press, 1967.

This volume includes primary documents on debates in the First Federal Congress, including debates that led to the enactment of the federal Bill of Rights.

Irons, Peter, ed. *Justice at War*. New York: Oxford University Press, 1983.

This is the story of the internment cases of Americans of Japanese descent. It includes interviews with people involved in these cases.

Irons, Peter, ed., *The Courage of Their Convictions: Sixteen Americans Who Fought Their Way to the Supreme Court*. New York: The Free Press, 1988.

There are sixteen case studies about Bill of Rights issues, the people who raised them, and the Supreme Court decisions that resolved them.

Kaminski, John P., and Richard Leffler, eds., *Federalists and Antifederalists: The Debate Over the Ratification of the Constitution*. Madison, WI: Madison House, 1989.

This collection of primary documents illuminates the basic issues and ideas about the nature of a free government, which divided Federalists and Antifederalists during the founding period. There is a section on the FederalistAntifederalist debate about a federal Bill of Rights.

Kammen, Michael. *A Machine that Would Go of Itself: The Constitution in American Culture*. New York: Alfred A. Knopf, 1986.

Kammen examines the cultural impact on the United States of America of its federal Constitution and Bill of Rights. There is a chapter on public opinion and knowledge about the Bill of Rights.

Kammen, Michael. *The Origins of the American Constitution: A Documentary History*. New York: Viking Penguin Books, 1986.

This collection of primary documents includes information about the origins and enactment of the federal Bill of Rights. Especially useful are reprints of letters exchanged between James Madison and Thomas Jefferson on the subject of constitutional rights.

Kammen, Michael. *Spheres of Liberty: Changing Perceptions of Liberty in American Culture*. Ithaca, NY: Cornell University Press, 1986.

Kammen analyzes the changing idea of liberty in American history, from the colonial period to the mid-twentieth century.

Kluger, Richard. *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality*. New York: Alfred A. Knopf, 1976.

This book presents the story of the struggle against segregated schools, with emphasis on the landmark Supreme Court decision in the "Brown" case of 1954.

Kukla, Jon, ed. *The Bill of Rights: A Lively Heritage*. Richmond: Virginia State Library and Archives, 1987.

This volume is a collection of essays on the constitutional amendments that constitute the federal Bill of Rights. Issues about the meaning and application of these constitutional rights are highlighted. The essays are written for a general audience in terms that the non-specialist can readily understand.

Laqueur, Walter, and Barry Rubin, eds. *The Human Rights Reader*. New York: New American Library, 1989.

This collection of primary documents, with commentaries by the editors and other experts, traces the global development of constitutional rights from origins in Western civilization to incorporation into documents of the United Nations.

Levy, Leonard W. *Origins of the Fifth Amendment: The Right Against Self-Incrimination*. New York: Macmillan, 1969.

This volume treats the events and issues that led to the constitutional right against self-incrimination.

Levy, Leonard W. *Emergence of a Free Press*. New York: Oxford University Press, 1985.

Levy details the origins of a basic constitutional right, freedom of the press, in political theory and practice. There is an emphasis on antecedents to the freedom of the press in England and during the American colonial experience. There is a chapter on freedom of the press issues associated with the Sedition Act of 1798.

Levy, Leonard W. *The Establishment Clause: Religion and the First Amendment*. New York: Macmillan, 1986.

Levy examines continuing constitutional issues, in historical perspective, having to do with the "Establishment Clause" of the First Amendment right to religious liberty.

Levy, Leonard W., Kenneth L. Karst, and Dennis J. Mahoney, eds. *Enclyclopedia of the American Constitution*, 4 volumes. New York: Macmillan Publishing Company, 1986.

This is an excellent comprehensive work on the origins, creation, and development of the Constitution of the United States. Each of the constitutional amendments that constitute the federal Bill of Rights is discussed by a renowned expert. Each article is followed by a brief bibliography.

Levy, Leonard W., and Dennis J. Mahoney, eds. *The Framing and Ratification of the Constitution*. New York: Macmillan, 1987.

This volume includes chapters by different experts on ideas and events associated with the making of the U.S. Constitution. There is a chapter on the Bill of Rights by Robert A. Rutland.

Lewis, Anthony. *Gideon's Trumpet*. New York: Random House, 1964.

This is the story of the landmark Supreme Court decision of *Gideon v. Wainwright*, which expanded the rights of a person accused of a crime.

Lockard, Duane, and Walter E. Murphy. *Basic Cases in Constitutional Law*. Washington, DC: Congressional Quarterly, 1987.

This book includes basic facts, issues, and decisions in 31 landmark cases of the U.S. Supreme Court. Most of these cases pertain to constitutional rights.

Lutz, Donald S. *The Origins of American Constitutionalism*. Baton Rouge: Louisiana State University Press, 1988.

Lutz examines fundamental primary documents in the development of the American concept of constitutionalism, which is a key to understanding the related concept of constitutional rights.

Morgan, Robert J. *James Madison on the Constitution and the Bill of Rights*. New York: Greenwood Press, 1988.

This work examines the political thought of James Madison, which greatly influenced the framing of the Constitution and the federal Bill of Rights.

Murphy, Paul L. *The Constitution in Crises Times, 1918-1969*. New York: Harper & Row, 1972.

This book is a history of constitutional rights during times of social conflict and change during the early and middle parts of the twentieth century.

Powe, Lucus A., Jr. *American Broadcasting and the First Amendment*. Berkeley: University of California Press, 1987.

Powe discusses how the development of broadcasting in the twentieth century led to new First Amendment freedom of expression issues. The regulations of the Federal Communications Commission are analyzed and appraised.

Project '87 of the American Historical Association and American Political Science Association. *This Constitution: From Ratification to the Bill of Rights*. Washington, DC: Congressional Quarterly, Inc., 1988.

This collection of articles, reprinted from the Project '87 magazine, includes several excellent pieces on the making of the federal Bill of Rights and the nationalization of the federal Bill of Rights.

Rutland, Robert Allen. *The Birth of the Bill of Rights, 1776-1791*. Boston: Northeastern University Press, 1983.

This work is a masterful account of the key events, persons, and ideas in the creation of the federal Bill of Rights.

Rutland, Robert Allen, and Charles F. Hobson, eds. *The Papers of James Madison*, volumes 10, 11, and 12. Charlottesville: University of Virginia Press, 1977.

These three volumes cover the ratification debate, including arguments for and against a fed-

eral bill of rights. These documents, annotated by Rutland and Hobson, also cover Madison's successful campaign for a seat in the first U.S. House of Representatives and his role in the enactment of the federal Bill of Rights.

Schechter, Stephen L., and Richard B. Bernstein, eds. *Contexts of the Bill of Rights*. Albany: New York State Commission on the Bicentennial of the United States Constitution, 1990.

This work includes articles by Donald S. Lutz, John P. Kaminski, and Gaspare J. Saladino on the origins, enactment, and development of the federal Bill of Rights.

Schwartz, Bernard. *The Great Rights of Mankind: A History of the American Bill of Rights*. New York: Oxford University Press, 1977.

This work surveys the ideas, issues, and events that led to the American Bill of Rights, and it examines ideas and issues on the development of constitutional rights.

Schwartz, Bernard, ed. *The Roots of the Bill of Rights: An Illustrated Source Book of American Freedom*. New York: Chelsea House Publishers, 1980.

This five-volume set documents the development of the ideas of constitutional rights from the Magna Carta in 1215 to the federal Bill of Rights in 1791. This set includes a rich collection of important primary documents that contributed significantly to the contents and enactment of the federal Bill of Rights.

Sexton, John, and Nat Brandt. *How Free Are We? What the Constitution Says We Can and Cannot Do*. New York: M. Evans and Company, 1986.

This book raises and answers questions about the constitutional rights of citizens.

Urofsky, Melvin I. *A March of Liberty: A Constitutional History of the United States*. New York: Alfred A. Knopf, 1988.

This is a solid treatment of U.S. constitutional history. The author includes detailed discussions of important Bill of Rights issues.

Witt, Elder. *The Supreme Court and Individual Rights*. Washington, DC: Congressional Quarterly, 1988.

This volume provides a detailed treatment of principles and issues about constitutional rights. There is a discussion and comprehensive listing of Supreme Court cases on civil liberties and rights.